

United States
Circuit Court of Appeals 8

For the Ninth Circuit.

S. L. SELIG, as Claimant of the Gas Power Boat
"EAGLE," Her Engine, Apparel, Tackle
and Furniture, and J. R. HECKMAN,
Stipulator,

Appellants,

vs.

MARY L. BRINDLE, as Executrix of the Estate
of ALEXANDER BRINDLE, Deceased,
Appellee.

Apostles on Appeal.

Upon Appeal from the United States District Court
for the Territory of Alaska, Division No. 1.

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court for the Territory of Alaska,
Division Number One.

IN ADMIRALTY—No. 493—KA.

MARY L. BRINDLE, Executrix of the Estate of
ALEXANDER BRINDLE, Deceased,
Libellant,

vs.

Gas Power Boat "EAGLE," Her Engine, Tackle,
Apparel and Furniture.
S. L. SELIG, Claimant.

Statement.

Time of Commencement of Suit:

August 13, 1921.

Names of Parties to Suit:

Alexander A. Brindle, libellant; Mary L. Brindle, Executrix of the Estate of Alexander Brindle, deceased, libellant by substitution; Gas Power Boat "Eagle," her engine, tackle, apparel and furniture, respondent; Steve Selig, claimant.

Names and Addresses of Counsel:

Chas H. Cosgrove, Ketchikan, Alaska, for libellant; Winter S. Martin, 703-4-5 New York Block, Seattle, Washington, for respondent and claimant.

Dates of Filing Pleadings:

Libel filed August 13, 1921; claim of owner filed September 12, 1921; answer of claimant filed September 12, 1921 (subsequently stricken); claim of owner filed September 13, 1921; exceptions to sufficiency of libel filed September 13, 1921; answer of

claimant filed December 17, 1921; amended libel filed January 19, 1922.

Attachment of Property and Proceedings:

Monition and attachment against respondent gas power boat "Eagle," etc., was issued out of said District Court on the libel of libelant therein on August 13, 1921, and said gas power boat "Eagle," etc., was attached by the United States Marshal for the District of Alaska, Division Number One, under said monition and attachment on August 16, 1921, and released into the custody of claimant on the same day on the giving of a bond for said release in the sum of \$8,000.00; and thereafter on September 13, 1921, claimant duly filed his claim for said vessel together with a stipulation for costs in said cause, in the office of the Clerk of said court.

The time when the trial of said cause was had was January 19th to January 23d, inclusive, 1922.

The name of the Judge hearing the same was the Honorable Thomas M. Reed, Judge of said District Court.

The trial of said cause on the merits was in open court and said cause was not referred to a commissioner or commissioners.

Final decree was entered in said cause on June 3, 1922.

Notice of appeal was filed in said cause on June 13, 1922, and service admitted by proctor for libelant on June 12, 1922.

Citation on appeal to the U. S. Circuit Court of Appeals was issued out of the District Court for Alaska, September 18, 1922, and service admitted

by proctor for libellant on September 26, 1922.
[1*]

Interrogatories Propounded by Claimant to Libellant.

To the Honorable Judge of the District Court for
the First Division of Alaska, Sitting in Admiralty:

Comes now the claimant and respondent in the above-entitled cause and propounds the following interrogatories to the libellant to be answered under oath, in manner and form to comply with the Admiralty Rules and practice, to wit:

1. State when and where the gas boat "Wildwood" was built, giving the specific date and year.
2. Give a full and complete description of her engine, with its capacity, speed, size, etc.
3. Describe fully the kind and character of electric lighting or other system employed and in use upon the "Wildwood" at and prior to the collision, giving the details of the same, candle-power of the lights, voltage, revolutions and capacity of generator if such was used on board the "Wildwood," and if no generator was used, give full details of the electric light plant, storage batteries, voltage capacity, etc.
4. State the original cost of the "Wildwood's" hull when completed before the installation of her engines, machinery, tackle and apparel.
5. State the costs of her engines, batteries and electrical equipment after installation, giving the

*Page-number appearing at foot of page of original Certified Transcript of Record.

itemized details as far as possible or original cost together with cost of installation. [18]

6. State the fair market value of the "Wildwood" immediately before the collision.

10. State fully in what particulars libellant suffered a loss of \$1500.00, or any other sum as a result of loss of fishing profits, use of the vessel, or demurrage by reason of the collision.

11. State under what kind of a charter-party, lease or agreement the "Wildwood" was working at the time of the collision, for whom, whether one or more persons, with their names and addresses.

12. Give the names and addresses of the shippers and charterers or consignors, by whom the "Wildwood" would have been employed during the remainder of the fishing season, together with a statement showing how, and in what particulars the gasoline boat "Wildwood" would have worked throughout the remainder of the fishing season, at what rate of hire or under what kind of charter or shipping arrangement.

13. State fully the extent of the injury and damage to the hull, machinery and equipment of the "Wildwood," giving an itemized statement thereof in the following particulars; injury and damage to the planking timbers and hull, injury and damage to the [19] engine, shafting and other machinery on board, injury to the boat's equipment, tackle, apparel and furniture together with the cost of replacement in each instance.

14. State how soon after the collision the work of repair and replacement was undertaken, how

long it would have taken to complete it, and when it was completed if at all.

15. Furnish respondent paid vouchers or receipted bills, showing disbursements made by *respondent* to restore the "Wildwood" to her condition before collision.

16. State when the "Wildwood" left port before the collision and whether she had run continuously after leaving port up to the time of collision.

Filed in the District Court, District of Alaska, First Division. Dec. 17, 1921. J. H. Dunn, Clerk. By A. W. Fox, Deputy. [20]

Answers to Interrogatories Propounded by Claimant to Libellant, Pursuant to Interrogatories Filed by Claimant to Libellant in the Above-entitled Cause, and Stipulation Filed Herein.

Alexander Brindle, libellant in the above-entitled cause, appears, and first being duly sworn to tell the truth, the whole truth and nothing but the truth, answers said interrogatories as aforesaid, as follows, to wit:

ANSWER TO INTERROGATORY No. 1

The only thing I can give is Ketchikan, Alaska, in 1906.

ANSWER TO INTERROGATORY No. 2.

24-27 Horsepower Heavy Duty Eastern Standard, three cylinder, four cycle, 320 Revolutions Per Minute.

ANSWER TO INTERROGATORY No. 3.

Two 6-volt Champion storage batteries, one Wizard Mageneto, one Auto-sparker, one switch-board, spark coil, electric side-lights, 4 candle power, with masthead lights and range light kerosene.

ANSWER TO INTERROGATORY No. 4.

Between \$1300.00 and \$1400.00.

ANSWER TO INTERROGATORY No. 5.

The Engine \$1880.00 after installation; batteries and electrical equipment \$137.00

ANSWER TO INTERROGATORY No. 6.

\$3500.00 [21]

ANSWER TO INTERROGATORY No. 10.

Agreement with H. M. Sawyer whereby libellant was to purchase and handle a portion of the catch of his fish-trap; also a tentative agreement with the Wards Cove Packing Company to the same effect, whereby libellant would, within the next sixty days, have cleared a minimum of \$1500.00, on account of the generous run of all kinds of fish, and the demand for the same.

ANSWER TO INTERROGATORY No. 11.

Freighting fish to Prince Rupert from Port Conclusion and Ketchikan, by the pound and piece, for J. S. Killean and A. W. Brindle.

ANSWER TO INTERROGATORY No. 12.

We were going to buy fish independently and take them to Prince Rupert. The fish were running good and we could have made good money in buying fish and taking them to Prince Rupert. We had offers to buy all kinds of salmon, including

Dog salmon, for delivery at Prince Rupert at prices that would have netted us at least \$600.00 to \$700.00 per month. For example, an independent trip netted us \$650.00, the trip occupying us less than one week's time.

ANSWER TO INTERROGATORY No. 13. [22]

Libellant answers Interrogatory No. 13 with the following itemized statement made by ship carpenter who was asked to make a survey and estimate of the cost of placing the boat in as good condition as she was prior to the collision. Included in this statement is the list of the following personal items and repair of engine, including loss of items and cost of overhauling the engine and replacement of apparel and furniture destroyed or wrecked:

New stern post, 8"x10"	\$10.00
New keel 8"x10"x40"	32.00
Planked halfway back 11¼" thick,	
960 feet	96.00
Decking 2"x5", 720 feet	72.00
Oakum and cotton	36.00
Nails and bolts	25.00
Iron bark guards	15.00
Rail, Oak, 3"x3" timbers	32.00
Paint, cement and pitch	18.00
Pilot house	250.00
Labor	672.20
Shaft Log	50.00

\$1328.30

Overhauling engine and new bronze

shaft200.00

ANSWER TO INTERROGATORY No. 14.

All we did was to salvage the engine, and the estimated time to repair the hull would be seven to eight weeks. No effort was made on the work of repairing or replacement, due to lack of funds on the part of the libellant.

ANSWER TO INTERROGATORY No. 15.

No vouchers for repairs made, other than those occasioned [23] by the salvage of the engine. Wreck of the hull now on the beach at Ketchikan, where libellant will be glad to show it to the respondent and his attorney.

ANSWER TO INTERROGATORY No. 16.

The "Wildwood" left Port of Ketchikan at 7:00 P. M. on July 23, 1921, and ran continuously, except for the period of two minutes when the engineer stopped the engine to tighten a loose wire, at a point one and one-half hours' sailing distance prior to reaching the point of collision.

The foregoing answers as given to the interrogatories on file herein are true, as affiant verily believes.

ALEXANDER A. BRINDLE.

Subscribed and sworn to before me this 15th day of December, 1921.

[Notarial Seal] CHAS. H. COSGROVE,

Notary Public in and for Alaska.

My commission expires March 1, 1923.

Filed in the District Court, District of Alaska,
First Division. Dec. 19, 1921. J. H. Dunn, Clerk.
By A. W. Fox, Deputy. [24]

Amended Libel.

To the Honorable ROBERT W. JENNINGS, Judge
of the District Court for the First Division of
Alaska, Sitting in Admiralty:

The libel and complaint of Alexander Brindle,
owner of the Gas Power Boat "Wildwood,"
whereof Lee Ryan is master, against the Gas Power
Boat "Eagle," whereof ——— was formerly mas-
ter, and J. E. Anderson is at present master, her
engine, tackle, apparel and furniture, in a cause
of collision, civil and maritime, alleges as follows:

I.

That the libellant, at the time of the happening
of the damage and injury hereafter mentioned was
and still is the owner of the gas power boat "Wild-
wood," of the burden of about thirteen tons, said
vessel being tight, staunch and strong, and well
and sufficiently manned and equipped, and pro-
vided with tackle, apparel and furniture.

II.

That on the night of Saturday, the 23d day of
July, 1921, about 10.20 o'clock P. M., the said gas
power boat "Wildwood" was proceeding down
through Revilla Gigedo Channel, and on a voyage
from Ketchikan, Alaska, to Prince Rupert with
a load of fresh fish; and about 500 yards off Mary

Island Light. The water was calm with no wind, and the night was clear and dark.

III.

That the said gas power boat "Wildwood," under the circumstances stated in the next preceeding article, was going at the rate of about seven (7) knots per hour, with all her power signal lights set, of the character and construction and in the position prescribed by the Acts of [26] Congress. Her master was at the wheel.

When at the point above described the master of said "Wildwood" observed a dark object off the port bow some distance away. The said object at first was taken for either a log or a shadow. As the object approached, and when about some sixty (60) feet distant, it was discovered that it was a boat, and afterwards ascertained to be the gas power boat "Eagle," and that the said gas power boat carried no lights, which made it impossible to determine, until almost in contact, whether she was a boat or a floating log, or merely a shadow. When about 60 feet distant said gas power boat "Eagle" flashed on her electric lights, and not until then was it determined that the oncoming body was a ship.

When observed at about a distance of 60 feet away, and having flashed on her lights as afore-said, instead of turning to the right, as the rules of the road required, she turned to the left and crashed into the "Wildwood" hitting the "Wildwood" in the stern, on the port quarter, making

it impossible for the gas power boat "Wildwood" to avoid collision.

IV.

That by reason of the default of said gas power boat "Eagle" in exhibiting no lights, as aforesaid, the master of said gas power boat "Wildwood" was not able to avoid collision, although he threw his wheel over, heading the said gas power boat "Wildwood" to the right, as required by the rules.

That in colliding with the said "Wildwood," the said gas boat "Eagle" struck her upon her stern, on the port quarter, about eight (8) feet from her stern, crushing the entire stern and causing her to sink to the water's edge immediately.

The crew of the said gas power boat "Wildwood" with great difficulty succeeded in getting two lines aboard the gas power boat "Eagle," and lashed the said "Wildwood" to the said "Eagle," and thus kept the "Wildwood" from sinking. [27]

V.

That the said collision was caused solely by the gross carelessness and negligence of the master and crew of the said gas power boat "Eagle" in not keeping a proper lookout as aforesaid, and especially in not having lights set in the proper manner and of the dimensions required by law, and was not attributable to any carelessness or negligence of the master or crew of the said gas power boat "Wildwood."

VI.

That immediately after said collision as aforesaid, the gas power boat "Wildwood" was brought to

Ketchikan, Alaska, where she was placed upon the beach on July 24, 1921, where she has been since the events hereinbefore narrated, and where she now is.

That due to lack of funds on the part of the libellant, she has not been repaired, and libellant says that by reason of said collision she was damaged to the amount of \$2500.00.

Libellant further says that the value of the cargo of fish aboard said gas power boat "Wildwood" at the time of said collision was about \$1000.00; that a part of the same was salvaged, but that the loss to the libellant, by reason of said collision and damage and costs of salvage was the sum of \$300.00, and equipment lost, amounting to the sum of \$534.50 additional.

Libellant further says that at the time of her collision she was engaged in the fish business, being used in the matter of transporting fish on commission, and also in the purchase and sale of fish, plying between the Ports of Ketchikan, Alaska, and Prince Rupert, B. C.; that the run of fish was very strong, and at the rate of profits said boat was showing at said time in said business, if continued from said date through the balance of said fishing season, to wit: About September 30, 1921, libellant would have netted the sum of at least \$1500.00, but that by reason of said collision and damage aforesaid, and his inability, on account of lack of funds, to make the necessary repairs, and libellant's inability to obtain another [28] boat of equal capacity and serviceability, said libellant

was completely put out of business, resulting in his damage as aforesaid in the sum of \$1500.00.

VII.

Libellant further said that the said gas power boat "Eagle" is a domestic vessel, running out of the port of Ketchikan, Alaska; that she is now in the District of Alaska and within the jurisdiction of this Court, and that all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable Court.

WHEREFORE, the libellant prays that process of attachment, in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said Gas Power Boat "Eagle," her engine, tackle, apparel and furniture, and that the said J. E. Anderson, master, and all other persons having or pretending to have any right, title or interest therein may be cited to appear and answer all and singular the matters articulantly propounded, and this Honorable Court shall be pleased to condemn the said gas power boat "Eagle," her engine, tackle, apparel and furniture, and that the same may be sold to pay the damaged claimed and stated therein, and that the Court will grant to the libellant such other and further relief as in law and justice he may be entitled to receive.

ALEX A. BRINDLE,

Libellant.

United States of America,
Territory of Alaska,—ss.

Alexander Brindle, first being duly sworn, says:

That he is the libellant named herein and who executed the foregoing libel, and that the statements therein contained are true, he verily believes.

ALEX A. BRINDLE.

Subscribed and sworn to before me this 11th day of August, 1921.

[Notarial Seal not affixed]

CHAS. H. COSGROVE,

Notary Public in and for Alaska.

My commission expires March 1, 1923.

Filed in the District Court, District of Alaska, First Division. Jan. 19, 1922. J. H. Dunn, Clerk.
By ———, Deputy. [29]

Answer to Amended Libel.

To the Honorable Judge of the District Court for the First Division of Alaska, Sitting in Admiralty:

The answer of Steve Selig, master and owner of the gas boat "Eagle" in a cause of collision, civil and maritime, alleges and avers as follows, to wit:

I.

That the gas boat "Eagle" is a gasoline power boat 63 feet long, 14.7 feet beam, 6.8 feet in depth and of 27 tons net thereabouts documented and licensed in the Port of Ketchikan, Alaska, whereof Steve Selig, claimant, and the respondent in the above-entitled cause is the owner and master.

II.

In answer to paragraph II of the libel respondent admits that on the night of Saturday the 23d day of July, 1921, at or about the time alleged in the

libel, the Gas Power Boat "Wildwood" was proceeding down through the Revillagigedo Channel on a voyage from Ketchikan, Alaska to Prince Rupert with a load of fresh fish. Respondent denies that the gas power boat "Wildwood" was about 500 [31] yards off Mary Island, but on the contrary alleges and avers the fact to be that she was approximately three-quarters of a nautical mile off of Mary Island Light. Respondent admits that the sea was calm with no wind and admits that the night was dark, but not entirely clear all of which will be more fully answered in the allegations to follow.

III.

Answering paragraph III of the libel, respondent admits that the gas power boat "Wildwood" was under way steering a southerly course, but is without sufficient information and has no knowledge as to her speed at and prior to the time of the collision. Respondent denies that the "Wildwood's" signal lights were set and denies that they were of the character and construction and in the position prescribed in the Acts of Congress. Respondent admits that the "Eagle" and "Wildwood" collided together in the Waters of Revillagigedo Channel about three-quarters of a nautical mile off of Mary Island Light. Respondent denies all and singular each and every allegation in paragraph III of the libel except as the same is herein specifically admitted.

IV.

Answering paragraph IV of the libel, respondent

admits that the Gas Boat "Eagle" and "Wildwood" collided together in the Waters of Revillagigedo Channel off Mary Island Light. Respondent denies all and singular the remaining allegations in said paragraph except that two lines were run from the "Eagle" to the "Wildwood," and so fastened to the "Wildwood" as to hold and keep her afloat.

V.

Replying to paragraph V of the libel, respondent denies all and singular each and every allegation therein, and particularly [32] denies all manner of negligence in the matter of said collision, all of which will more fully appear in respondent's affirmative answer hereinafter set forth.

VI.

Respondent is without sufficient information or knowledge to form a belief as to the truth of the matters and things propounded and alleged in paragraph VI of the libel and therefore deny the same. And respondent particularly denies that irrespective of any damage to the "Wildwood" that her cargo suffered no damage and that she sustained no other or further damage in the matter of loss of fishing profits or demurrage as alleged in the libel, or in any manner at all.

VII.

Respondent admits paragraph VII of the Libel.
AND FURTHER ANSWERING RESPONDENT ALLEGES:

I.

Respondent alleges that as hereinbefore alleged

the gas power boat "Eagle" is a gasoline power boat, of the dimensions and descriptions hereinabove set forth, engaged in the fishing business out of the Port of Ketchikan, Alaska.

II.

That on the 23d day of July, 1921, said gas boat "Eagle," under the command of her master and owner, said Steve Selig, was returning from the Port of Prince Rupert in British Columbia to her home port in Ketchikan aforesaid without cargo on board. That her course was approximately northwest half west magnetic according to the Government Chart from Tree Point to Mary Island, across the waters of Revillagigedo Channel. That the night was very dark with more or less haze upon the water. That said Channel at the point [33] opposite Mary Island Light is approximately four nautical miles in width. That Mary Island lies to the westerly side of the channel while the mainland of Alaska lies immediately to the east about four nautical miles distant. That said mainland of Alaska opposite Mary Island Light and for some miles northerly and southerly is very high and mountainous. That immediately north of Mary Island, approximately five nautical miles distant is Point Alava, which is the most southerly point of Revillagigedo Island. That said southerly part of said Island at Point Alava is also high and mountainous. That the effect of this high and mountainous land at the southern end of said Island and upon the mainland hereinbefore described is to darken the surface of the waters

lying between Mary Island, the mainland and Point Alava. That said mountains cast a dark and heavy shadow over said waters so that a vessel following the course which the "Eagle" was running upon the night of the collision was headed directly into said darkness and shadow area. That the haze upon the waters hereinbefore mentioned and the dark shadows of the mountains were such as to render the water area at or near the point of collision very dark and to deprive the navigator of the "Eagle" of the natural light of the heavens upon a dark night. That there was no moon to furnish any additional light and the stars were partially obscured.

III.

That the "Eagle" is equipped with regulation electric masthead, range and side lights. That these lights are furnished with electric current from the generator attached to the main engine. That they are sufficiently powerful to be seen the distance required by the collision rules and statutes and were at the time of the collision burning brightly. That the said gas boat [34] "Eagle" was proceeding at a speed of about eight miles per hour bound for the Port of Ketchikan aforesaid.

IV.

That in addition to the master and owner there were serving on board at said time two men, viz: Joe Olander, and Al Ames. That at and immediately prior to the time of collision said Al Ames was at the wheel in the pilot-house and said Olander was on watch acting as lookout and watch-

man. That these men kept a sharp and vigilant lookout and were at the time of and immediately prior to the collision carefully and skillfully steering the gas boat "Eagle." That no lights were observed upon the sea ahead or upon either bow of the "Eagle," as she proceeded upon her said course until she had reached a point approximately three-quarters of a mile east by north from Mary Island Light, when her helmsman and lookout observed the sudden appearance of a dim light bearing about two points on the starboard bow and approximately fifty or sixty feet distant.

That almost immediately after seeing the said light the hull of the "Wildwood" came out of the darkness and crossed the "Eagle's" bow in such close proximity as to render collision unavoidable. That the elapsed time from the moment the said dim light was first observed by the wheelsman and lookout on the "Eagle" until the collision occurred did not exceed five or six seconds.

That immediately upon seeing the said dim light which was afterwards ascertained to be the mast-head light of the gas boat "Wildwood" the master and crew of the "Eagle" immediately reversed the "Eagle's" engines and drove them full speed astern. That the "Eagle's" gasoline engine and reverse gear were in first-class condition at the time of collision and when reversed by her master [35] and crew had the effect of instantly reducing her speed and of causing her to stop going ahead within the time elapsing from the moment the dim

light was observed and the coming together of the vessels.

That the situation of peril which was suddenly and without warning forced upon the "Eagle" and her master and crew was one where said vessel, her master and crew were required to act *in extremis* and the sudden peril and excitement prevented the giving of any danger or other signal. That the time in which to act was so short that while the failure to give whistle signals did not affect and could not in any manner have affected the situation which the said colliding vessels were in prior to the coming together of said vessels and the collision was unavoidable and inevitable from the time said dim light was first observed by the "Eagle" and her crew.

That as respondent afterwards ascertained, the light first observed and which suddenly appeared in the darkness ahead of the "Eagle" upon her starboard bow was the masthead light of the Gas Boat "Wildwood." That no other lights were burning or showing upon the "Wildwood." That she had no side-lights and no range light; and there was no other indication by whistle, signal, light or sound to indicate the presence of the "Wildwood" or her close proximity to the "Eagle." That respondent verily believes that when the master of the "Wildwood" first sighted the "Eagle" that he immediately placed his wheel hard aport and swung very quickly to starboard so as to place the "Wildwood" squarely across the course and bow of the "Eagle." That the said gas boat "Wild-

wood" is a small boat, approximately thirty feet long, which was at the time of collision loaded and lying deep in the water. That her [36] short length and load enabled her to answer her helm immediately and that by reason thereof when her wheel was placed hard aport she swung immediately to starboard and across the "Eagle's" bow with such speed and so quickly as to prevent any action on the part of the master and seamen on the "Eagle" to prevent a collision.

V.

That in all respects the master and owners of the gas boat "Wildwood" were solely and entirely at fault. That their failure to exhibit lights required for gas boats operating within the inland waters of the United States, and the failure to sound a whistle or other signal upon the said dark and obscure waters of Revillagigedo Channel, and their attempt to make a port to port passing thereby crossing the "Eagle's" bow and course, when if she had maintained her course and speed she would have made a starboard passing with safety, was the sole, proximate and efficient cause of the collision without which the same would not have occurred. That the gas boat "Eagle" was saved from a serious collision and damage only by the fact that she was at the time of the impact going full speed astern.

VI.

That the master and crew of the said gas boat "Eagle" immediately placed lines around the hull of the "Wildwood" and made them fast to the

“Eagle,” thereby preventing her foundering in the waters of the Revillagigedo Channel. That the men on board the “Wildwood” were taken on board the “Eagle” and said “Wildwood” was towed to the Port of Ketchikan by the “Eagle.” That all and singular the respondent rendered such aid as was necessary and requisite to save the “Wildwood” and her crew in the circumstances of the collision. [37]

VII.

That the “Wildwood” was placed upon the beach at Ketchikan and was by the action of the “Eagle” saved for her owner. That she has as respondent verily believes sustained no other or greater damage than \$500.00, which expenditure may be necessary to restore the “Wildwood” to her former condition. That respondent verily believes and alleges the fact to be that the “Wildwood” sold her cargo of fresh fish to the same advantage and profit as she would have but for the collision and that she suffered no loss by reason thereof, nor did she suffer any loss by reason of her failure to continue in the fishing business during the summer of 1921.

WHEREFORE the respondent having fully answered all and singular the allegations of the libel as required by the rules of practice and admiralty procedure, prays that said cause against the “Eagle” may be dismissed and that he have and recover his costs, fees and disbursements in said cause.

WINTER S. MARTIN,
Proctor for Respondent and Claimant.

State of Washington,
County of King,—ss.

Steve Selig, being first duly sworn, on oath says:
That he is the respondent and claimant in the
above-entitled action; that he has read the fore-
going answer, knows the contents thereof and
believes the same to be true.

STEVE SELIG.

Subscribed and sworn to before me this 7th day
of December, 1921.

[Notarial Seal] WINTER S. MARTIN,
Notary Public in and for the State of Washing-
ton, Residing at Seattle.

Filed in the District Court, District of Alaska,
First Division. Dec. 17, 1921. J. H. Dunn, Clerk.
By A. W. Fox, Deputy. [38]

Order for Substitution of Libellant.

It appearing that Alexander A. Brindle, libellant
in the within entitled action, has died, and that
Mary L. Brindle has been duly appointed executrix
of the estate of Alexander A. Brindle, deceased,
and that letters testamentary thereon have been
duly granted to her as such executrix by the Pro-
bate Court at Ketchikan, Alaska, and that she has
filed her oath therein and is now the duly qualified
and acting executrix of such estate,—

IT IS ORDERED that this action be, and the
same is hereby revised and continued in the name

of Mary L. Brindle, executrix of the estate of Alexander A. Brindle, deceased, as libellant, and that the said executrix be and she is hereby substituted as libellant in the place and stead of said Alexander A. Brindle, deceased, and that such revival and continuance be without prejudice to any of the proceedings already had in this action.

Dated at Ketchikan, Alaska, this 3d day of June, 1922.

THOS. M. REED,
Judge.

Filed in the District Court, District of Alaska, First Division. Jun. 3, 1922. J. H. Dunn, Clerk.
By ———, Deputy.

Entered Court Journal No. D, page 258. [40]

Opinion.

CHARLES A. COSGROVE, Proctor for Libellant.

WINTER S. MARTIN, Proctor for Claimant and Respondent.

On July 23, 1921, a collision occurred in the waters of Revillagigedo Channel, off Mary Island, in the waters of the Territory of Alaska, between the gas boat "Eagle" and the gas boat "Wildwood," in which the "Wildwood" was damaged. Alexander Brindle, the owner of the "Wildwood," libeled the "Eagle" on August 25, 1921, alleging that the collision occurred through the sole fault of the "Eagle," and on September 10, 1921, Steve Selig appeared and filed his claim to the gas boat

“Eagle” and answer to the libel. Pursuant to stipulation of proctors on either side, an amended answer to the libel was filed by the claimant on December 17, 1921, denying all the material allegations of the libel and averring that responsibility for the collision lay with the gas boat “Wildwood.” On January 19, 1922, at the beginning of the hearing, an amended libel was filed by the libellant, under stipulation of proctors for the respective parties, in which it was alleged that the collision was the fault of the “Eagle,” in that she carried no lights and did not exhibit any lights until within about sixty feet distant from the “Wildwood.” Testimony was taken before the court on January 19, 20, and 21, 1922, and the case continued until February 20, 1922, for the submission of certain depositions on behalf of the claimant. [55]

The uncontradicted testimony shows that on the night of July 23, 1921, the gas boat “Wildwood,” being of thirteen tons gross measurement and of a length of forty-five feet, was proceeding in a southerly direction on a voyage from Ketchikan, Alaska, to Prince Rupert, British Columbia, loaded with a cargo of fresh fish; that her crew consisted of one Leo F. Ryan, as master, and Harold Brindle as engineer. The weather was good, the sea calm and the night clear and bright, as the moon was nearly full and only occasionally obscured by clouds. The testimony of Ryan, the master of the “Wildwood,” is to the effect that when opposite Mary Island Light, at about the hour of 10:20 P. M., he observed, at a distance of from a

hundred to 125 feet, off the port bow, a black object, which he took to be a log, but that almost immediately thereafter lights were flashed on, showing the masthead and the two side-lights of a boat which he afterwards found to be the gas boat "Eagle"; that on observing the lights, he immediately put the helm hard to port to sheer off to starboard; that the oncoming boat also turned in the same direction and struck the "Wildwood" on the port quarter, about eight feet from the stern, causing the damage complained of.

The "Eagle" was in charge of the claimant Selig, who, some twenty minutes before the collision, had gone between-decks, preparatory to retiring. He left, as helmsman, one Al. Ames and also one Olander in the pilot-house, and the only testimony on the part of the claimant as to the facts leading up to the collision was that of Ames. It seems that the testimony of Mr. Olander, who was with Ames in the pilot-house of the "Eagle," could have been procured by the claimant, as his whereabouts was known until six weeks prior to the time of the hearing, but was not produced at the hearing and his, Olander's, testimony is entirely lacking, although it would have been very material. [56]

Ames testified that he was a deckhand on the "Eagle"; that he had worked on different boats—three or four days altogether; that he was at the wheel of the "Eagle" at the time of the collision and Olander "was there; just around there." He "guessed he was on lookout." Selig was down

in the engine-room, according to the testimony, and he turned the lights on on the "Eagle" about twenty minutes before the collision, when Ames took the wheel. The "Wildwood" was fifty or sixty feet away when he first observed her. He though he saw one white light which was dim, about seven or eight feet above deck. When he saw the "Wildwood," he put the wheel hard aport, turning his boat to the right, or starboard. When he saw the "Wildwood," she was two points off the starboard bow. Taking the testimony of these two witnesses as to the position of the two boats just prior to the collision, it would appear that the "Wildwood" had the right of way, as the position of the "Eagle" from the "Wildwood" was approximately two points off the port bow of the "Wildwood," and the position of the "Wildwood" from the pilot-house of the "Eagle" was two points off the starboard bow of the "Eagle."

According to this testimony, both boats turned to the starboard—the "Wildwood" toward the Mary Island shore, lying to the westward, and the "Eagle" to the eastward, toward the open channel. I, however, cannot come to the conclusion that the "Eagle" turned to the starboard, or toward the open channel. According to the undisputed testimony, the "Wildwood" was struck on her port quarter about eight feet from the stern, smashing her timbers and cutting her down below the water-line, and if the "Eagle" had promptly put her helm to port, she would have cleared the "Wildwood" or at least struck her only

a glancing blow. In confirmation of this conclusion is the testimony of the two witnesses, David [57] Kinyon and his wife, who had a plain view of the collision from the shore of Mary Island. These witnesses were the assistant lighthouse-keeper and his wife, and both gave a clear, detailed, unbiased account of the accident and their testimony is entitled to the highest credit. Mrs. Kinyon, wife of the assistant keeper of the lighthouse, stated that she, on the evening of July 23d, at about ten o'clock, saw a light proceeding south, and, thinking it the mail boat, watched it. She first saw it about a mile away, the weather being fine and apparently clear. There was a moon at times and it was quite light. As she entered the porch of her house, she saw a green light and from the arrangement knew it was not the mail boat which she was expecting. After that she and her husband heard the exhaust of another boat, coming from a southerly direction and looked for its lights, but could not see any, though they could hear the exhaust distinctly and she could distinctly see the lights on the south-bound boat. On the north-bound boat she could see no light, but could hear the exhaust distinctly. Yet the north-bound boat was traveling at full speed. She observed the boats for many minutes, because she considered that they were headed for each other and she expected a collision. A few minutes before the collision, the north-bound boat flashed on her lights and, when she struck, Mrs. Kinyon observed three lights—a red light, a green light and a white light

on the north-bound boat. She said, "It seemed to me that the helmsman just momentarily, before they struck, must have directed his course directly toward us; it seems to me that he threw his boat to the port. As to the south-bound boat, I could only see the white light, because the green light had been shut out, she being south of us. But I seen the green light and the white [58] light prior to that time." When they collided, they were from the shore, from the beach, not over five hundred feet. On her cross-examination, Mrs. Kinyon testified that the south-bound boat was closer in to shore than the north-bound boat and that the collision occurred about seven hundred feet from where she was standing on the shore, and further, on direct examination, she testified that the interval between the flashing on of the lights on the north-bound boat and the collision was not more than five seconds—that "it was such a short time there was no time for thinking." David Kinyon, the assistant lighthouse-keeper, corroborated his wife in every particular as to there being no lights on the north-bound boat. He picked her up with the glasses and observed her for about four minutes and saw her flash on the lights not more than two seconds before the collision. On cross-examination he said he first saw a red and white light and then, two seconds later, saw the green light when she turned toward the shore, and said, "She headed toward shore and came around quick."

From this testimony, which so clearly detailed the circumstances of the collision, I can come to no other conclusion than that the south-bound boat; that is, the "Eagle," was traveling at full speed without lights, at any rate up to within a very few seconds of the moment of collision. The lighthouse-keeper says two seconds; his wife says five or six, but that she could not estimate the interval because it was so short there was not time to think.

The testimony of Ames is to the effect that he first saw the "Wildwood" when she was fifty or sixty feet off—a distance which, if the boats were traveling at their ordinary speeds, it would have taken them about two seconds to cover. As to the position of the boats, especially from Mrs. Kinyon's testimony, [59] it appears that the "Eagle" was the farther offshore, which corroborates to some extent the testimony of Ryan, the master of the "Wildwood," and Ames on the "Eagle," that they were approaching on an angle, the "Wildwood" being two points off the starboard bow of the "Eagle" and the "Eagle" two points off the port bow of the "Wildwood." I am, therefore, satisfied from the testimony that the "Eagle" did not port her helm and turn to the starboard, as testified by Ames, but that she either kept on her course or turned to port, or inshore toward Mary Island, as testified to by Ryan and by Mr. and Mrs. Kinyon. If the "Eagle" had turned to the starboard, she would have cleared the "Wildwood" or at least have struck her only a glancing blow, and the tes-

timony shows that the impact was almost direct, tending slightly toward the stern of the "Wildwood."

I can, therefore, come to no other conclusion than that the proximate cause of the collision was the negligence of the "Eagle," first, in traveling after nightfall without lights, and second, in not turning to the starboard on discovery of the "Wildwood." The proctor for the claimant, in his very able and comprehensive brief, contends that the "Wildwood" was also at fault in that there was no lookout on the "Wildwood," other than the helmsman in the pilot-house; that the master of the "Wildwood," though having a certificate, was not twenty-one years of age and, therefore, not qualified to act as such, and that when he first discovered the "Eagle" approaching, he was at fault in not signalling as to passing and, therefore, that the damage should be divided.

I am of the opinion, however, that these three contentions cannot be sustained in this case. The helmsman of the "Wildwood" first discovered the "Eagle" at a distance of from a hundred to a hundred and twenty-five feet as a dark object, which he could not identify as a vessel. In space of time, this could have been [60] only four or five seconds, at the most, before the collision. When the lights were flashed on the "Eagle," at the most four seconds only, perhaps less, ensued, before the collision and there was no opportunity to give him the signal. The right of way was with the "Wildwood." The approaching vessel was

off the port bow apparently head on and the obvious thing for the helmsman of the "Wildwood" to do was to immediately turn her to the starboard, and, in a case of extreme danger like this, the omission to signal cannot be considered a fault.

The question of the age of the master of the "Wildwood" cannot be material. The "Wildwood" was a motor boat of class three, of 13 tons burden and about 43 feet in length, and is subject only to the regulations of Sec. 4412, Revised Statutes, as to the passing of vessels; and Secs. 4233 and 4234 relative to lights and so forth; also only while carrying passengers for hire, she is required to be in charge of a person duly licensed for such service (See act of June 6, 1910). It was not necessary, at the time of the accident, that the "Wildwood" should have been in charge of a licensed master, for she was not, at that time, carrying passengers. Moreover, whether it was necessary or not, the master of the "Wildwood" had received his license as such, presumably on the authority of the local inspectors and the owner of the "Wildwood" was justified in relying upon that certificate.

Again, I can discover no negligence or incompetency on the part of the master of the "Wildwood" after the first discovery of the approach of the "Eagle." He acted promptly and did the necessary and obvious thing by sheering off to starboard. The contention of the claimant on this point cannot be allowed.

The third and most serious contention of the respondent is the lack of a lookout other than the helmsman of the "Wildwood." [61] It is a rule that all vessels should have a lookout other than the helmsman and this lookout should be stationed at the bow of the boat, where he can have free and untrammelled vision over the water. This rule is undoubtedly as applicable to the boats of the motor class as to ocean steam vessels.

The Neo. G, 235 Fed. 119.

The failure to keep a lookout is a violation of the general rule to prevent collisions between vessels and nothing can exonerate a vessel from such failure, unless it should appear that the collision would have occurred notwithstanding such failure. The proper place for such a lookout is such a position as will afford a view over the bow of the vessel where the best opportunity is afforded for observation of approaching vessels.

See The Price Oskar, 219 Fed. 483.

The Dedamore, 147 Fed. 884.

Eastern Dredging Company vs. Winnisimmet Co., 162 Fed. 860.

The pilot-house is not the proper place for a lookout, except under such circumstances that it is the only safe place.

See The Tilicum, 230 Fed. 415.

The Otta, 3 Wallace, 269.

However, looking at the situation of the two boats as I find them to have been at the time of the collision, I am inclined to believe that the lack of a proper lookout on the "Wildwood" was not

a contributory cause of the collision. It appears from the testimony that Ryan, master of the "Wildwood," saw a black object which he thought to be a log, about two points off the starboard bow. Mrs. Kinyon also testified that just prior to the collision she saw a black object, which she was unable to identify, but considered it to be a log just prior to the time of the accident. [62] If it were, as Ryan supposes, a log which he saw, he, by keeping on his course, would have avoided it, but when the lights of the "Eagle" were flashed on, it was too late to avoid a collision. The proximate cause of the collision was the lack of lights on the "Eagle" up to the time when too late to avoid the collision. If the lights had been on the "Eagle" at the time when Ryan, the master of the "Wildwood," first saw the black object, the collision would have been avoided. Again, it appears that the "Eagle" was observed by the master of the "Wildwood" at least two or three seconds before the "Wildwood" was observed by the helmsman of the "Eagle" or the lookout, Olander, who was in the pilot-house of the "Eagle." This, although the "Wildwood" had all her lights burning. Thus there can be no comparison as to the vigilance or competency of the lookouts on the two vessels. If, as required by the regulations, the lights on the "Eagle" had been lit and the lookout, instead of being in the pilot-house, had been at the bow of the boat, tending to his duties, a collision would probably have been avoided. Where there has been gross fault shown on the part of one vessel,

it is incumbent on that vessel to show, by clear testimony, a contributing fault on the part of the other vessel. This, under the circumstances of the case, I do not think that the respondent has done. It is also well settled that if a collision is not shown to have resulted because of neglect to keep a proper lookout, the vessel should not be made responsible for the consequences of the collision.

See *The Bluejacket*, 144 U. S. 372.

The New York Cent. No. 22, 135 Fed. 1021.

It further appears from the testimony that the fault on the part of the "Eagle" is so gross and inexcusable that any [63] question of a contributing fault on the part of the "Wildwood" should be resolved in her favor, and I, therefore, must decline to divide the damages arising from the collision.

As to the amount of the damages to which the "Wildwood" is entitled and the cost of repairs to the hull, there is a wide variance in the testimony. The testimony shows that the hull of the "Wildwood" was built in 1906 and that her construction was not balanced, she being weak in the after part. The libellant states that the hull lay for some years under water and that he purchased the hull in that situation for the sum of \$350; that he raised and repaired it at a total cost of \$1,300; that the engine cost him \$1,200, exclusive of repairs, and that the total value of the boat and equipment at the time of the collision was \$3,500. It appears that the hull was in good condition except for minor faults in construction criticised by

the ship carpenters making estimates of the cost of repairs. The cost of repairs was estimated by expert witnesses at from \$500 to \$1,328, and it is very difficult to reconcile this wide discrepancy, depending as it does so much on the view of the several ship carpenters as to what was necessary to place the hull in its former condition. All the carpenters testified that it was very questionable whether the hull was worth repairing. Inman, a witness for the libellant, to whom the libellant submitted the cost of repairs immediately after the accident, seems to have made the most complete examination of the hull and he expresses his conviction that the repairs would cost \$1,328. Other witnesses, on behalf of the respondent, vary from \$500 to \$1,000 in their estimates. [64]

A review of the whole testimony leads me to believe that the hull could be repaired at less cost than Mr. Inman testified to, but that it would be much more expensive than testified to by respondent's witnesses. In my judgment, a fair estimate of the cost of repairs, including the replacement of the keel, would be \$1,050, and that amount shall be allowed against the "Eagle" for repairs to the hull of the "Wildwood." The cargo loss amounts to the sum of \$294.30 and this amount should be allowed. Replacement of the batteries, electrical equipment, boat and other supplies and equipment should be allowed in the sum of \$222.50, being two-thirds of the estimated cost price of the articles lost, on the principle adopted by insurance companies in supplying new material for old material

lost as the nearest approximation possible at the time of the collision. For reconditioning the engine and a new shaft, instead of the old shaft which was bent, there should be allowed the sum of \$200, which is estimated as the amount necessary to place the engine in condition. For demurrage, or loss of the use of the boat, an amount should be allowed, but only for the time requisite to make necessary repairs. The estimates as to the time for the repairs of the boat given by the experts vary, but a reasonable time for the repairs from the date of the collision, including the replacement of the electrical equipment, would be not over four weeks from the time of the accident. It appears that the boat was under charter or hire to one Harold Brindle, who was engaged in buying fish and transporting them to Prince Rupert, Canada, for sale. He testified that the collision occurred in the midst of the fishing season and that the reasonable profits derived from the business in which the boat was engaged under his management during the balance of the [65] season, would have been from \$1,500 to \$2,000 and that the boat's percentage of this would be one-third. Therefore, during the season the boat would have earned approximately \$500, the season lasting approximately sixty days and during the four weeks which the boat would have been out of commission as a result of the accident, the earnings would have been approximately \$240. I therefore consider that \$240 is a reasonable sum to allow for demurrage or loss of the use of the boat until the

time she could again be put in commission, which sum will be allowed, making a total allowance of Two Thousand and Six Dollars and Eighty Cents (\$2,006.80), which sum is the total damage to the "Wildwood" and cargo by reason of the collision.

Let findings and decree be prepared in accordance herewith.

THOS. M. REED,
Judge.

March 27, 1922.

Filed in the District Court, District of Alaska, First Division. Mar. 31, 1922. John H. Dunn, Clerk. By W. B. King, Deputy. [66]

Decree.

This cause having come on regularly for trial and hearing before this court on January 19, 1922, at which time said libelant and said claimant herein appeared with their proctors and witnesses, and testimony proffered by both sides was fully heard by this Court, and said cause having been thereupon continued until February 20, 1922, for the submission of certain depositions on the part of the claimant herein, and thereafter said depositions having been filed and fully considered with the rest of the testimony by this Court, and the Court having heard the arguments of the proctors for the respective parties upon pleadings and proofs, and due deliberation being had thereon, and thereafter this Court having fully considered

the same and having duly filed his opinion upon the merits in said cause; and thereafter said Alexander A. Brindle having died and Mary L. Brindle having been duly appointed executrix of the estate of the said deceased by the Probate Court at Ketchikan, Alaska, and on motion having been duly substituted as libelant herein in the place and instead of the said Alexander A. Brindle, deceased, by an order of this Court duly rendered,—

NOW, therefore, IT IS ORDERED, ADJUDGED AND DECREED that said libelant recover of the gas power boat “Eagle,” her engine, apparel, tackle and furniture, the sum of \$2,006.80 and his costs and disbursements herein to be taxed.

And it further appearing that the said gas power boat “Eagle” [67] was released from the attachment in this case by the filing of a bond for the sum of \$8,000.00, with S. L. Selig, and J. R. Heckman as obligators, it is hereby ORDERED, ADJUDGED AND DECREED that the libelant do recover against the said S. L. Selig and J. R. Heckman the sum aforesaid, hereinbefore decreed against said gas power boat “Eagle”; and that the libelant may have his execution against said obligors, or either of them, to enforce the payment of said amount hereinbefore decreed; but said execution shall not issue for the period of twenty days from the date of this decree.

Done in open court this 3d day of June, 1922.

THOS. M. REED,

Judge.

Filed in the District Court, District of Alaska,
First Division. Jun. 3, 1922. J. H. Dunn, Clerk.
By _____, Deputy.

Entered Court Journal No. D, page 259. [68]

Transcript of Evidence.

Tried at Ketchikan, Jan. 19-20-21, 1922.

APPEARANCES:

CHAS. H. COSGROVE, for Libellant.

WINTER S. MARTIN, for Respondent and Claimant.

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Statement of Facts and Bill of Exceptions.

This cause came on regularly for hearing on the merits on January 20, 1922, and said hearing was continued from day to day, Saturday and Sunday excepted, until, and was concluded on, January 23, 1922, before the Honorable Thomas M. Reed, Judge of said District Court, the parties to said cause appearing by their respective proctors and the following proceedings were had and testimony taken, each of the witnesses called at said hearing being first duly sworn to tell the truth, the whole truth and nothing but the truth and the following depositions of witnesses for the respective parties, together with exhibits attached thereto, theretofore duly taken, were severally offered, received and read in evidence, as follows herein.

Mr. Charles H. Cosgrove, of Ketchikan, appeared for libellant;

Mr. Winter S. Martin, of Seattle, appeared for claimant.

And thereupon the libellant, to maintain the issues on his part, introduced the following evidence, to wit: [70]

Testimony of Alexander Brindle, in His Own Behalf.

ALEXANDER BRINDLE, called as a witness in his own behalf, having been first duly sworn, testified as follows:

Direct Examination by Mr. C. H. COSGROVE.

Q. What is your name?

A. Alexander Brindle.

Q. Are you the owner of the gas power boat "Wildwood"? A. Yes, sir.

Q. Were you the owner on the 23d day of July last? A. Yes, sir.

Q. That is; 1921? A. Yes, sir.

Q. What is the size of that boat, Mr. Brindle?

A. She is about forty-five over all; she's fourteen gross and thirteen net, I think it is, tons.

Q. What was her physical condition on the 23d day of July? I mean as regards repairs and general efficiency.

A. To my knowledge, she was in first-class shape. She was thoroughly overhauled last spring.

Q. Had she been overhauled recently?

A. In the spring, or during the winter; I forget which.

Q. How old a boat was she?

A. I think she was built in 1906, but I am not sure. I have the papers right here.

(Testimony of Alexander Brindle.)

Q. And she was repaired last when?

A. The last thorough repairing she had, thorough overhauling, was four years ago.

Q. And you know who did that?

A. Yes, sir; it was done over in the shipyard by Mr. Brown, the boat builder. [71—1]

Q. Had she been repaired at all since that time?

A. Just little repairs that she needed. There's always some repairs to make on a boat every year.

Q. You remember who did them?

A. Some we did ourselves.

Q. Has Mr. Inman made any repairs on her?

A. Mr. Inman put an engine in her; overhauled the engine-room floor and things like that.

Q. On the 23d day of July, 1921, what was her value? A. I fix it at \$3,500.

Q. \$3,500? A. Yes, sir.

Q. You remember the collision which happened on the 23d day of July? A. Yes, sir.

Q. Did you see the boat on the 23d day of July?

A. Yes, sir.

Q. When did you next see her?

A. I saw her on the morning of the 24th.

Q. Where?

A. Laying in the creek; on the beach.

Q. Is she there now?

A. No; we hauled her out of the creek a few days afterward. When we could get her out, we floated her on farther down the beach, and put her on the gridiron.

Q. Where is she now?

(Testimony of Alexander Brindle.)

A. She's on the beach in Indian town.

Q. Did you have her repaired? [72—2]

A. No, sir.

Q. Why not? A. I haven't got the money.

Q. Have you had her surveyed? A. Yes, sir.

Q. Have you asked for contracts, for estimates as to what it would cost to repair her?

A. Yes, sir.

Q. More than one? A. Yes; two.

Q. Who were the shipbuilders that you asked to bid?

A. I asked Otto Inman and the shipyard, the Marine Railway.

Q. What were those bids?

A. I think one was in the neighborhood of \$1,300 and the other was \$1,325.28; something like that.

Cross-examination by W. S. MARTIN

Q. Mr. Brindle, this boat was built in 1906?

A. I think about then.

Q. And you acquired her when?

A. About four years ago; four or five years ago.

Q. That's after she was in trouble out there and was on the beach and under water for three or four years.

A. She was tied alongside of the dock and neglected and that's the reason she sunk. She was sunk through neglect; but she wasn't in the water any such length of time.

Q. Well, she was under water for quite a while?

A. She was under water for about two weeks; yes.

(Testimony of Alexander Brindle.)

Q. How much did you pay for her?

A. How much did I pay for her?

Q. Yes.

A. What I paid for the boat? [73—3]

Q. Yes. A. To put her into the water?

Q. No; how much did you pay for her?

A. I paid \$350 for the hull as she stood in the water.

Q. Now, do you say she stood you \$3,500?

A. Yes.

Q. You bought the boat and the engine, just as she stood, for \$350?

A. No; I got another engine.

Q. You took the engine out of her? A. Yes.

Q. You got yourself another engine?

A. Yes, sir.

Q. Where did you get this engine?

A. I got that from a man named Atkinson.

Q. How much did you pay for it?

A. That engine, interest and all, cost me close to \$1,800.

Q. Huh?

A. It cost me close to, in the neighborhood of \$1,800.

Q. Are you sure of that?

A. I've got the actual figures.

Q. Where did the engine come from?

A. It came from the east. [74—4]

Q. Second-hand engine?

A. Yes; from New Jersey.

Q. How much did you pay for that engine?

(Testimony of Alexander Brindle.)

A. In the neighborhood of \$1,800; but I don't know how much it was exactly.

Q. You can't recall, then, just what you did pay?

A. No; I had to pay in installments and pay my interest, too.

Q. That was how long ago?

A. Three years ago, I think. [75—5]

Q. What does the boat stand you, Mr. Brindle?

A. Well, that it is nearly impossible to tell, because it cost me over a thousand dollars—cost me \$1,300 to put her in the water; to get her so that I could put the engine in her.

Q. Well, now, in this case, here is this boat, built in 1906? A. Yes.

Q. And you paid \$350 for the hull. A. Yes.

Q. And you bought this new engine? A. Yes.

Q. That was four years ago. You know, as a matter of fact, that if you had to go and buy a boat, you could pick up a boat for a much more reasonable price than that? A. Not that boat.

Q. Well, you say "not that boat." Now this boat is about how long—forty-five feet over all?

A. Yes, about that.

Q. And her tonnage was thirteen?

A. Thirteen, fourteen.

Q. There have been boats of that sort sold here in Ketchikan in the last two or three years, haven't there, boats of that size— [76—6]

Q. Do you know anything about the "Dixie"?

A. Yes; I know her.

Q. Well, what did the "Dixie" bring?

(Testimony of Alexander Brindle.)

A. I don't know.

Q. You don't know. Well, where do you get the idea that your boat was worth \$3,500?

A. Because that was the going price of boats last year.

Q. Well, you say "the going price of boats." What boat? Can you tell me any boat that brought \$3,500?

A. I can tell you a boat nearly the same size that brought \$5,500.

Q. What boat was that? A. The "Zora."

Q. The "Zora"? A. Yes.

Q. How large is she?

A. I don't know her tonnage; nearly the same size.

Q. How long is she?

A. About the same size boat. She may be a foot or two longer.

Q. Isn't it a fact that the "Zora" is, say 60, 65 feet and your boat forty? A. I think not.

Q. When was the "Zora" built?

A. I don't know.

Q. You don't? A. No.

Q. And so you are estimating, now, the value of your boat to be \$3,500 because some boat that you know of by the name of "Zora"—You don't know how old the "Zora" is? A. No.

Q. Well, wouldn't the age make some difference?
[78—8]

A. Not to me, if she's a good boat.

(Testimony of Alexander Brindle.)

Q. If the "Zora was two years old, or three years old and had a good, staunch hull, launched three years ago, wouldn't that make some difference? And your boat built in 1906. Wouldn't that make some difference in the price? A. Not much.

Q. It wouldn't? A. No.

A. In other words, Mr. Brindle, your estimate of \$3,500 for this boat is merely your own sort of guesswork, so to speak?

A. My own figures; yes.

Q. Your own figures? A. Entirely.

Q. And you can't justify to his Honor; you can't justify that figure by comparison with any boat that you know of, of the same size and capacity, tonnage, build and age? You can't tell now, at this moment, what a boat of that type and size and age, built in 1906, when she was sold to you, what that boat would have brought? A. No.

Q. And you call attention to the "Zora" and you say that your boat is worth as much as the "Zora," and you don't even know when she was built?

A. I say she's a stronger built boat than the "Zora" to-day.

Q. And there is the "Zora," resting on the ways, a new boat, and your boat was built in 1906, and you want us to believe that your boat was worth \$3,500.

NO RESPONSE.

Q. You say it would cost \$1,300 or \$1,400 to repair that boat?

A. That is the estimate given to me. [79—9]

(Testimony of Alexander Brindle.)

Q. Well, now, who gave it to you?

A. The shipyard.

Q. The shipyard. Who?

A. The Marine Railway.

Q. Who is the Marine Railway?

A. Schlothan.

Q. Who is Schlothan? Who is the man?

A. He is the man that owns the railway.

Q. Did Mr. Schlothan give you an estimate?

A. Mr. Schlothan gave me a price.

Q. When.

A. He gave it to me, the first time, about three months ago. Has he given you one since?

A. Not Mr. Schlothan, but his foreman, or his man in charge of the works.

Q. What is his name? A. Thompson.

Q. Mr. Thompson? A. Yes.

Q. George Thompson? A. Yes.

Q. And he gave you the last estimate?

A. Yes, sir.

Q. Mr. Thompson then told you that his price was how much? A. What?

Q. He told you that his price, now, to repair the boat, was what?

A. In the neighborhood of \$1,300.

Q. In the neighborhood of \$1,300.

A. Yes; that's an estimate. [80—10]

Q. You didn't repair the boat? A. No, sir.

Q. You couldn't have repaired it?

A. I could not have repaired it.

(Testimony of Alexander Brindle.)

Q. You say the boat was earning a good deal of money here. In your answer to interrogatory No. 12, you say: "We were going to buy fish independently and take them to Prince Rupert. Fish were running good and we could make good money. We had offers to buy all kinds of salmon, including dog salmon, for delivery at Prince Rupert, at prices that would have netted us at least six to seven hundred dollars a month; for example, an independent trip netted us \$650, the trip occupying us less than one week's time."

You made that statement? A. Yes.

Q. Then that was quite a profitable investment for you? A. How is that?

Q. I say it was quite a profitable investment for you. It was a money-earning concern for you.

A. Oh, yes.

Q. You live here in town? A. Yes, sir.

Q. How long?

A. Oh, about twenty-three, four years.

Q. You are well known here, of course?

A. Pretty well.

Q. Been here over twenty years? A. Yes.

Q. Own your own property, I suppose?

A. Yes.

Q. You realize, of course, that anybody who does work on a boat has an admiralty or maritime lien against the boat? [81—11] A. Yes.

Q. And the boat was valued at \$3,500?

A. Yes.

Q. Will you explain to the judge how you

(Testimony of Alexander Brindle.)

couldn't get credit; why you couldn't have the work done?

A. Because they wouldn't extend the credit.

Q. Oh, they wouldn't? A. No.

Q. Then, notwithstanding your claim that the boat was worth \$3,500, the boat people didn't think she was worth what it would cost to repair her?

A. They wouldn't extend the credit.

Q. They wouldn't extend your credit for \$1,300 on a value of \$3,500? A. No.

Q. How about your own standing in the town? You own your own property? A. Yes.

Q. And lived here twenty years. A. Yes.

Q. But you say you didn't have funds nor couldn't get funds. A. No; I couldn't get funds.

Q. You could, as a matter of fact, if you had funds, you could have the boat repaired in about ten days, couldn't you? A. I believe not.

Q. Well, what did George Thompson tell you?

A. I think he told me seven or eight weeks, it would take to repair her thoroughly.

Q. Seven or eight weeks? A. I think so.

Q. How many men did he figure on using? [82—12] A. I don't know.

Q. You don't know whether it would mean seven weeks using one man or three weeks using four men?

A. I don't know anything about his business at all.

Q. And so you figure that you lost these profits

(Testimony of Alexander Brindle.)

that you claim because you couldn't get your boat repaired? A. Yes.

Q. And you never made any effort at all to get it repaired? A. I certainly did.

Q. I see. What's your boy's name, your son's name? A. Which one?

Q. Well, the boy that was in charge?

A. The boy that was on the boat was Harold.

Q. Harold. Who was in charge with him?

A. A man named Ryan.

Q. Ryan? A. Yes.

Q. What arrangements did you have for working the boat at that time?

A. In what way, do you mean?

A. Well, you were hauling some fish? A. Yes.

Q. Under contract with whom?

A. The boys handled all that; I have nothing to do with it.

Q. Then you don't know anything about it?

A. No. [83—13]

Testimony of A. J. Inman, for the Libellant.

A. J. INMAN, called as a witness on behalf of the libellant, having been first duly sworn, testified as follows:

Direct Examination by Mr. C. H. COSGROVE.

Q. What is your name? A. A. J. Inman.

Q. Where do you live? A. Ketchikan.

Q. How long have you lived here?

A. About thirty-one years.

(Testimony of A. J. Inman.)

Q. What is your business? A. Boat builder.

Q. How long have you been in that business?

A. Well, I have been in it practically ever since I have been in the country, and before I came up here.

Q. Are you in that business now? A. Yes.

Q. Where is your place of business?

A. It's in what they call Indian town, over here on the flats.

Q. Are you familiar with the gas power boat "Wildwood"? A. Yes.

Q. Owned by Mr. Brindle. A. Yes, quite well.

Q. Did you have occasion to make a survey of her? A. Yes.

Q. When?

A. The day it was—the next morning after it was towed in, is the first time I looked at her.

Q. Was she damaged? A. Well, yes; badly.

Q. Will you describe to the Court, please, the condition you found her in? [85—15]

A. Well, I found the boat in the creek, the first time I examined it, laying in the creek, and I hadn't had gum boots on and I couldn't thoroughly examine her at that time, although I went around and cut in from practically back of the pilot-house. Of course the boat wouldn't float without help or assistance. The way she was, she was full of water. Water was running right through her then and from that time on.

Q. Did you subsequently make a thorough survey of her?

(Testimony of A. J. Inman.)

A. I did later on; yes; after they got it out of the creek.

Q. Well, now, just describe what condition you found her in—how she was damaged, where and to what extent.

A. I studied her over for two or three days. Sometimes I figured that it really wasn't worth repairing and then again I figured it could be fixed, but I figured that the expense of fixing her up would practically amount to a new one.

The COURT.—Just tell what damage was done to her.

The WITNESS.—The stern post was knocked out and the planking was cut through—

The COURT.—How far?

The WITNESS.—Clear on down, practically to the keel. Stern post knocked clear out and broke; keel was cracked and the shaft and counter was all knocked out and the keel was cracked and—Did I say the keel was cracked?

The COURT.—Yes.

The WITNESS.—And she was shook from the stem clear; that is pulled from her stem away, from the stem aft—drawed from her stem, drawed back.

The COURT.—Seams all open?

The WITNESS.—Keel was cracked.

The COURT.—How about the seams? All open?

The WITNESS.—Oh, yes; they were all open. You could crawl through the side of her, so far as that's concerned. Timbers were broken. It means new timbers. [86—16]

(Testimony of A. J. Inman.)

The COURT.—How about the ribs?

The WITNESS.—That's what I call the ribs—the timbers.

Q. Did you make an estimate of the cost of repairing it? A. Yes, I did.

Q. What was your figure?

A. Well, I couldn't state just exactly now. I got them in black and white somewhere, unless I mislaid them.

Q. Well, in round numbers?

A. Practically \$1,300; something of that kind.

Q. Thirteen hundred and some odd dollars?

A. Yes.

Q. Was it over \$1,250? A. Yes.

Q. And less than \$1,300?

A. No; I think it was a little over \$1,300. I'm not quite sure. I could find out. I figured up the parts; that is, what parts needed repairing. That is the way I generally do that. Figure on certain parts so much, and so on.

Q. Could you build that kind of hull for \$1,300?

A. Well, I probably couldn't build one exactly like that one for \$1,300, although I could build one of the same size.

Q. Just describe to the Court how she was built.

A. She was built with natural crook yellow cedar timbers, which I wouldn't undertake to build of now, because it is too much work to get them out. You never can get paid for doing that work. When you go out into the woods to get natural crook yellow cedar, it means that it's going to cost

(Testimony of A. J. Inman.)

you money, whereas if you stem the timbers, you do away with that. She is built extra heavy—strong.

Q. Is that the way she was built—extra heavily built? [87—17] A. Yes.

Q. Natural crook yellow cedar.

A. Yes. I know the man that built her. I don't know just what time, but it was something over two years that they were building her.

Q. Do you remember the "Wildwood" about the 23d of July, 1921, the day she was injured?

A. Yes.

Q. What would you consider her value to be at that time, knowing what you do about the boat?

A. Why, I figure the boat was practically as good as new.

Q. Well, what would you consider her value in money to be?

A. Value, well, I never figured anything like that. Now, you see, it's this way. A boat might be valuable to the man that owns it and yet she wouldn't be valuable to me, or something that I owned might be valuable to me and wouldn't be valuable to him. That's a kind of hard thing to say.

Q. Could you tell, from your examination of the boat, where she was hit?

A. Where she was what?

Q. Where she was hit? A. Oh, yes.

Q. Where was that?

A. She was hit on the left side of the cabin.

(Testimony of A. J. Inman.)

Q. On the port side aft? A. Yes.

Q. How far from the stern, about?

A. Between eight and ten feet, I should judge.
I never measured it.

Q. You say you are in doubt as to whether she is a total [88—18] wreck, whether she would be worth fixing up? A. I did.

Q. But that you offered to take the contract for something over \$1,300. A. Yes.

Q. Is she pulled away?

A. From her stem; yes.

Q. From her stem.

A. Practically twisted.

Q. Practically a total wreck?

A. Yes, practically a total wreck. If it was my own, I would consider it so.

Cross-examination by Mr. MARTIN.

Q. You know the man that built this boat?

A. I do.

Q. As a matter of fact, they weren't boat builders? A. No; they were not.

Q. Yes. And they took about two years to build it? A. Yes.

Q. And went out and hunted up,—you say, natural crooks? A. Yes. [89—19]

Q. Natural pieces, bent. A. Yes.

Q. There were no natural bends down aft on the stern, were there? A. Part of them.

Q. Well, where was the last rib? Now, you are talking about natural bends and crooks there.

(Testimony of A. J. Inman.)

Don't you know, as a matter of fact that the last four or five timbers in that vessel, the last four or five ribs, were sawed? Don't you know it?

A. No; I don't know, but then I wouldn't wonder.

Mr. MARTIN.—Probably I better introduce this as an exhibit. I'll offer it now for identification, as Claimant's Exhibit No. 1.

The COURT.—The diagram may be marked Claimant's Exhibit No. 1.

Q. Now, will you look at this and see whether that rough diagram would represent the keel of the vessel and her stern post, in a rough way, for the purpose of illustration to the court. [90—20]

Q. Now, I have written the word "stern post" upon that exhibit and I have written the word "Sampson piece" and I have written the word "keel" there. Would that accurately, to your mind represent a rough illustration of the stern post, Sampson piece and keel?

A. Well, does that represent the outside and the inside, then?

Q. Yes, outside and inside; both.

A. But it don't show the planking. There's the planking, you know.

Q. Oh, yes, the planking comes out here, but that would represent the frame structure, wouldn't it?

A. Yes; that is, the inside.

Q. Now, how about the deadwood?

A. There is no deadwood.

(Testimony of A. J. Inman.)

Q. Inside of that triangle (showing). Point it out to the Court.

The COURT.—I understand.

Q. Between the stern post—for the purpose of the record, between the stern post, keel and Sampson piece there should be something that you call deadwood?

A. There's a timber what is called shaft log.

Q. There is a shaft log and deadwood, too, isn't there? A. No.

Q. You say there isn't, but I say there should be. A. No, not necessarily.

Q. Not necessarily?

A. There's two ways of building those boats. You have a skag boat and a keel boat.

Q. But this is a keel boat. [91—21]

A. This is a keel boat.

Q. There is no deadwood, then, at all?

A. Not that I know of.

Q. Well, we'll say at the point of collision; from the point of collision on aft the ribs were sawed, weren't they?

A. I couldn't say because I hadn't paid so much attention.

Q. Oh; you didn't pay attention to it. Well, now, all those timbers aft were sawed in that boat.

A. But even if they were—

The COURT.—(Interrupting.) Well, just answer the question. [92—22]

Q. As a matter of fact, you could buy that same lumber for \$80, couldn't you?

(Testimony of A. J. Inman.)

A. Laid down in Ketchikan? Q. Yes.

A. No; not unless I ordered it from below. I suppose you might.

Q. Well, that would make a difference of 20 per cent in your price?

A. There would be a difference.

Q. Twenty per cent in the cost of your material?

A. Probably that much in the material.

Q. That is, in the lumber?

A. There's two grades of that lumber; two or three grades of that lumber.

Q. Well, clear fir.

A. Yes; I paid \$80 myself right from Seattle.

Q. So that your estimate of a hundred dollars is a little high, isn't it? A. No.

Q. But you could have bought it for eighty. Don't you know that? A. No, not here.

Q. Coming now to the frames, how many frames?

A. How many frames?

Q. Yes.

A. I don't recollect exactly. [94—24]

Q. Could you estimate that it would cost thirteen or fourteen hundred dollars? A. Yes.

Q. Of course, I want to know what your estimate is based on, but you can't tell me at this time the number of frames.

A. I know they would all have to be renewed from there (indicating) back.

Q. But, how many would that be, sir?

A. Well, it's last July since I took them figures and I don't remember now.

(Testimony of A. J. Inman.)

Q. Decking. Coming now to the item of decking, how much decking would you figure there was?

A. Well, there would be, those timbers should be about not over twelve inches.

Q. Well, how many feet?

A. That would practically mean, I suppose, about ten.

Q. What would you estimate the decking would be; the cost of the decking? A. Cost of that?

Q. Yes. A. That is, the same class of timber?

Q. No; I said decking.

A. The decking. I have got that all figured out and every article but I haven't got it with me.

Q. At this time, sir, you can't tell me what you estimate the decking to be?

A. No; each one separately, I cannot. [95—25]

Q. You figured on a new stern post?

A. I figured on a new keel.

Q. What would you say that would be?

A. A new stern post, six months ago, is quite a while, but I have been doing a lot of figuring on a whole lot more of them.

Q. Would you figure she would need stern guards? A. I sure did.

Q. What would you estimate that at?

A. That's the same thing. There's a regular book of this stuff.

Q. As near as you can recall now, sir; all you can recall is that your estimate was \$1,300 or \$1,400?

A. Something of that kind. I got it all down,

(Testimony of A. J. Inman.)

even right up to the last nail, bolts and nails and all. I always do that.

Q. How long would that job take?

A. If I remember right, they figured five weeks, if I remember right. I have forgotten exactly the time on that. Five weeks for one man, I think it was.

Q. You have forgotten about that? A. Yes.

Q. You figured five weeks for one man? [96—26]

A. That's the way I figured.

Q. You figured on one man?

A. I always figure that way.

Q. Now, Mr. Inman, you are the proprietor, of course, of your own boat-building establishment, repair-shop, how many men do you have working for you?

A. That depends on what comes up. At the present time I ain't got any. There is nothing doing for anybody in the boat line.

Q. Well, last summer—July 23d.

A. Last summer I had one most of the summer. Later on in the spring, for a time I had three.

Q. Now, your estimate on the amount of time was based, of course upon doing it with one man?

A. Yes.

Q. Meaning yourself? A. Yes.

Q. You didn't figure on employing anybody?

A. Myself or another man; either one.

Q. You simply figured on one man?

A. Yes, that's what I figured on.

(Testimony of A. J. Inman.)

Q. Now, you figured out the number of things you would have to put in her, planks, timbers, and so on, doing all that, you figured on one man's time?

A. Yes.

Q. By the way, you say that in your judgment, a new keel was necessary. A. It was.

Q. You didn't have the boat out on the drydock or marine ways to look at the keel, did you?
[97—27]

A. Well, I couldn't see any more right on this floor. You could see it just as plain.

Q. So that here is the boat, canted over on her side and resting over there in the mud—

A. (Interrupting.) Yes.

Q. (Continuing.) and when she's exposed the keel is half sunk in the mud.

A. Oh, no; not over there.

Q. Well, it's down, indented in the mud, isn't it?

A. It's bound to dent in some, I suppose—the weight of it.

Q. Indented in, isn't it?

A. Yes; it must be some.

Q. Now, would you tell us that you looked down—You didn't dig any hole out in under the keel, did you? A. No; I didn't.

Q. And still you estimated that she should have a new keel.

A. I seen it before, when the keel was off the ground; that is the back end of the keel.

Q. What was off the ground?

(Testimony of A. J. Inman.)

A. Yes; in the creek, the keel, back end of it, was off the ground. It was the next day after she was towed in. She hung over a reef. It throwed her stern clear, because a chain was passed underneath it. They fastened the tackle to it to try to float her, but didn't float her. I believe that some other boat come and took her off.

Q. But the keel was open to inspection so that one could go down there and by looking at the edge, as it was resting on the beach, could see it? It was there exposed? [98—28]

A. You could look from the inside.

Q. So that if His Honor wanted to go down there and look at the keel, His Honor could see it?

A. You could see from the top side if it was cracked or not; didn't have to dig under it to see it.

Q. Did you think the boat was, as a matter of fact, hardly worth the cost of repairs?

A. I hesitated myself.

Q. Huh?

A. If it had been my own, I would have hesitated.

Q. Let's develop that a little further. What do you think she was worth, as an old 16-year old boat, 17 year old boat, built in 1906, what would you think she was worth, according to what you could go out and buy boats for in the market? You could pick her up for a thousand dollars anyway, couldn't you?

A. No, I didn't think you could have bought it for a thousand dollars. You can't buy much of a boat for a thousand dollars even today.

(Testimony of A. J. Inman.)

Q. You don't know what the "Lubra" brought, do you, or any of these other boats that I spoke about? Let's see if you do. Do you know the "Lubra"?

A. No, I don't know as I do, not by name. I may have seen her.

Q. You wouldn't know about that boat, then?

A. No.

Q. You know the "Helen A"?

A. Yes.

Q. She was sold last year?

A. Yes.

Q. What did she bring? [99—29]

A. I couldn't tell you.

Q. Huh?

A. I couldn't tell you.

Q. Now, she's eight tons net. How about the "Dixie"?

A. The "Dixie"?

Q. Yes.

A. Yes.

Q. You know the "Dixie"?

A. Yes.

Q. She was nine tons?

A. Yes.

Q. She was sold last year?

A. I expect so.

Q. You know she brought \$500 right here in the market?

A. And that's about six bits more than she was worth?

Q. Huh?

A. That's about six bits more than she was worth.

Q. Yes, but she was built in 1906?

A. Yes.

Q. She was nine tons. And the "Wildwood" was built in 1906, and she was 13 tons?

A. Yes.

Q. And it was built, by your own confession, by

(Testimony of A. J. Inman.)

men who were not boat builders.

A. Yes. [100—30]

Q. Now, Mr. Inman, in your judgment, it would be a doubtful question whether you would want to spend money to repair her?

A. Yes. Now, that isn't because she's rotten or anything of that kind, because the boat was absolutely not rotten.

Q. But her value?

A. That's the way I figured.

Q. If you have to go out and spend thirteen, take thirteen hundred out of the bank and put it into that boat, it is a question whether you wouldn't take your thirteen or fourteen hundred dollars and buy a new boat rather than repair the old one?

A. That's the way I looked at it.

Q. And you know that thirteen or fourteen hundred dollars spent in doing the work you would do on that boat wouldn't give you a very good job, would it?

A. You never can make a new boat out of an old one. See?

Q. No; an old boat that was built in 1906, built the way that boat was, it would be just a waste of money to put thirteen or fourteen hundred dollars into her?

A. She was built too heavy; too strong in spots. That's the way they do. They don't build uniform. That's the trouble with men that's not used to that.
[101—31]

(Testimony of A. J. Inman.)

Q. This boat was built, as you say, built by men who were not used to it; so she was built heavy, strong in spots. A. They do that always.

Q. She wasn't a well built boat?

A. I couldn't say that she was.

Q. Now, coming to this, if the boat had been well built, a good, strong boat, well built, now, as a practical boat builder like yourself, you know she wouldn't have suffered the damage she did?

A. No, if that boat was my own, made by me, it would have cut her stern off and wouldn't hurt her at all.

Mr. COSGROVE.—It would cut the stern right off?

WITNESS.—Yes; that's just the way I figured it.

Q. That is, cut her stern off. A. Yes.

Q. Of course, it didn't cut her stern off?

A. No.

Q. You don't mean to convey the impression to His Honor that your boat would be less strong than that one? A. It would have been; yes.

Q. Your boat would have been weaker.

A. It wouldn't hurt the forward part. That's what I'm driving at.

Q. It wouldn't have drawn her out of line?

A. It wouldn't have drawn her out of line; just simply cut her [102—32] off and went on.

Q. In other words, this boat was sprung and

(Testimony of A. J. Inman.)

jammed out of shape because she was an old, weak boat?

A. She was too heavily built; too heavy a frame.

Q. When a boat with too heavy a frame gets a blow like that, why the damage is greater than it would be with a well-built boat?

A. Her frame was heavy enough for a boat twice that size.

Q. Yes. And she suffered greater damage, therefore, because of her particular kind of construction, whether you call it weak or strong. Would you say that lying on the beach down there, that she would hog? A. No; it wouldn't hog her.

Q. And warp out of shape? A. No.

Q. You wouldn't think that it would make any difference?

A. That was done that way when it was struck, when she hit—twisted.

Q. She wouldn't be twisted that way now and her frame sprung if she had been strong or the right kind of build.

A. With that kind of jar, she would have sprung away. Couldn't help it.

Q. But she wouldn't have suffered nearly the damage that she would have otherwise.

A. The year before last I had to repair one the same way. It was knocked over, I think, 18 inches, twisted in the same way and, mind you, that only cut two planks. That was a cannery tender, but the stem was 18 inches out of line.

(Testimony of A. J. Inman.)

Q. And that was due to faulty construction to begin with?

A. No; that was due from the blow it got and it was guarded.

Q. But you say, in this particular case, coming down to the [103—33] “Wildwood” you do say that because of the blow she got that she sprung out of shape and she is in a worse condition than she would have been if she had been well built.

A. She struck on the weakest part of the boat; her weakest place. If that had been a foot forward where she struck, it wouldn’t have hurt it much.

Q. But because of this faulty construction, she suffered more than she would have otherwise?

A. All those boats have, as a rule, a weak stern. See? Any overhanging boat.

Mr. MARTIN.—That’s all.

Redirect Examination by Mr. COSGROVE.

Q. Do I understand you to say this boat is not well built?

A. She is very well built in this way: She is built extra heavy, different from most boats. She is awfully strong in places, but you take any boat, in the back end, as a rule, is the weakest place in them.

Q. Would you say then, that that boat possesses faulty construction?

A. Oh, no, no; not necessarily that.

Q. I mean the “Wildwood.” You say she is faultily constructed?

(Testimony of A. J. Inman.)

A. She was built this way: she was built by men that were not boat builders. They build them strong in their idea in places and weak in other places. Now, if that boat had been hit a foot forward, it wouldn't hurt her half as bad.

Q. But because she was so strongly built, instead of going all the way through it, instead of the way the "Eagle" would do, it simply jarred her?

A. Yes; shook her, drew her in.

Q. So that, instead of being faultily constructed, it was built [104—34] too strongly?

A. In striking the side that way and being so solid, it pulled her right back from the stem—slipped her, whereas, if the boat had been one of mine, it wouldn't have done that, because it would have been much weaker. It would have cut through her and wouldn't hurt the forward part at all.

Q. By the way, these figures that you say you have prepared, are they at your home, at your place of business?

A. I think they are, if I haven't destroyed them.

Q. Will you kindly look them up and have them at two o'clock? A. Yes

Mr. COSGROVE.—That's all.

Recross-examination by Mr. MARTIN.

Q. Let me call your attention to this diagram here, Claimant's Exhibit 2 for identification. Would that fairly represent the timbers and frame of a boat in a general way, for purpose of illustration, if you are looking right through the frame?

(Testimony of A. J. Inman.)

A. Looking standing up on top? Looking down?

Q. No, standing, looking inside?

A. Yes, but you don't want this one here (indicating). That goes inside of your rib.

Q. Now, calling your attention to letters A, B, and C, those are called cant timbers, aren't they? as a practical boat builder, they are called cant timbers?

A. Well, I never had any real particular name for them.

Q. Those are the timbers that come up in the stern. A. I see.

Q. Now, where was this boat struck, Mr Inman? She was struck aft, four or five feet from the stern, wasn't she?

A. No; you see, she was struck in here (pointing) some place. [105—35]

Q. Struck right about there (indicating). Place where the boat was struck, past the stern post; back of the stern post.

The COURT.—Back of the stern post?

Mr. MARTIN.—No; forward of the stern post?

The COURT.—Forward of the stern post.

Q. How much, in what portion would you say she was struck from the bow down to the stern? Where did that blow strike her?

A. That would be about—

Q. (Interrupting.) Aft of amidships?

A. Yes; it's aft of amidships?

Q. And about halfway between amidships and the stern?

(Testimony of A. J. Inman.)

A. Yes; about halfway between amidships and the stern.

Q. Then it would be just a little bit forward of the stern post?

A. A little forward of the stern post.

Q. Would that (indicating) be about it?

A. I would think so.

Q. Let that represent the letter X.

A. Just roughly.

Q. That X, then, would represent about where she was stuck?

A. I think that would be about right.

Q. Now you say she had steamed, not steamed but natural crooks?

A. Those were natural crooks.

Q. The crooks were in the frame forward of this place where she was struck? A. Yes.

Q. And from the place where she was struck aft, they were sawed timbers, weren't they?

A. I would not say they were.

Q. You wouldn't say?

A. No, because I don't know.

Q. But if she had sawed timbers from that frame, where she was [106—36] struck aft, why that wouldn't be good construction.

A. If I had been repairing it, I would have put in sawed frames—

Q. How is that?

A. The sawed frames are just as strong as the natural crooks, if they are put in right.

(Testimony of A. J. Inman.)

Q. How about these frames?

A. They should be just as strong as the natural crooks.

Q. Do you know whether those frames were well put in or not as a matter of ship construction?

A. The only thing that was out of place was that cant piece inside there. That should have been a little heavier. That's the matter with that.

Q. And that being so, and those cant timbers being of that weak construction, it sprung open a whole lot more than she would have otherwise, didn't it, in your judgment, as a boat builder?

A. No, that wouldn't have stopped that part. That wouldn't have stopped that part at all. That timber in there had nothing to do with the top part.

Q. But you do say that her general faulty construction was such that the damage was much worse and greater than it would otherwise have been?

A. Size them up any way you want to, there is practically nothing you can put in there to stop that anyway. You take two boats coming together at any twelve miles an hour, whatever it might be, it's quite a blow.

Q. Where was she struck? How did the colliding vessel strike her [107—37]

A. It looked as though, to me, as though she struck the blow going toward the stern on her.

Q. Well, the timbers indicate that, don't they?

A. Well, yes; everything shows that.

Q. The way the wood is dented in?

(Testimony of A. J. Inman.)

A. It shows that; yes.

Q. So there is no question, in this particular case, there is no question or no chance that she was coming the other way and struck her blow going forward, but she struck her ranging aft?

A. Yes. [108—38]

Testimony of George Thompson, for the Libellant.

GEORGE THOMPSON, called as a witness on behalf of the libellant, having been first duly sworn, testified as follows:

Direct Examination by Mr. COSGROVE.

Q. What is your name? A. George Thompson.

Q. Where do you live?

A. Charcoal Point, at the Marine Ways.

Q. Are you in business there?

A. Yes, repairing boats for the Northern Machine works.

Q. Is that your trade—shipbuilder?

A. That is my business.

Q. How long have you been engaged in the trade?

A. Where? In this city, altogether?

Q. Anywhere, altogether.

A. About thirty-four years.

Q. How long have you been in that business here?

A. Three years; three years this month.

Q. Have you had occasion to examine the gas power boat "Wildwood"?

A. I have had two occasions.

Q. One was at the request of Mr. Brindle, the owner?

(Testimony of George Thompson.)

A. Yes, I was down there with Mr. Schlothman last summer. I can't recall the date of the first examination, but the second—

Q. (Interrupting.) Did you examine that boat at the instance of anybody else? A. Yes.

Q. From whom did the other request come?

A. Come from Mr. Martin and Mr. Selig.

Q. Did you make a survey of her to determine how badly damaged she was?

A. I made the best survey I knew how. [109—39]

Q. For what purpose was that made?

Q. Made to estimate what the cost would be to put her in shape to go to sea.

Q. Have you those figures with you?

A. Beg pardon?

Q. Have you those figures with you?

A. Yes, I have.

Q. What is your total bid, Mr. Thompson?

A. My total bid was \$1,052.50, providing I don't have to put a new keel in her, but if she should have to have a new keel, it would be \$250 more to go on to that. The way she was laying, I couldn't see whether the keel would have to come out or not.

Cross-examination by Mr. MARTIN.

Q. You told me that, in your judgment, that apparently there wouldn't have to be a new keel?

A. So far as I can see; yes. Q. Yes.

A. I didn't make any statement that it wouldn't have to come out, but so far as I could see, all that I could see of it I couldn't tell.

(Testimony of George Thompson.)

Q. The boat is canted over on her side over on the beach? A. Yes.

Q. And you can see under the keel? I believe you went down with your rubber boots, kneeled down and looked under?

A. I took a sighting fore and aft, but her shoe was still on and you couldn't very well see her keel.

Q. But, now, if there had been any seams in the keel, it would have been open to you on inspection?

A. If it had been on the port side, I certainly would have seen it. [110—40]

Q. And you looked down. The keel was canted over, just like the edge of this book, and you could see whether there was any seams breaking?

A. The shoe was still on. The keel might have it, but still not show a split.

Q. In your judgment, do you think you would have to put in a new keel?

A. I was not sure of the damage. I made an estimate of it in case it did have to go in. I wouldn't want to swear that she isn't damaged, because I couldn't see the damage laying down that way. Before I could say, I would want to tear into her.

The COURT.—Just a moment. Let me ask right here, if the keel is cracked, would you have to take the keel out?

A. Yes, if the keel was split through, it would have to come out. There is no possible way of making it tight that I know of otherwise.

Q. But Mr. Thompson, if there is a crack, when

(Testimony of George Thompson.)

you got down on your knees and looked up from that edge of that keel exposed to you, you would have seen it, wouldn't you?

A. Well, I couldn't see the bottom edge of the keel.

Q. But the covering or the shoe would have been cracked if the keel was cracked?

A. Not necessarily. The stern post is mortised down into the shoe—into the keel, not into the shoe, but is mortised down into the keel, and if that stern post had been driven to the starboard, she would either have broken the *t* off or split the keel.

Q. But on the investigation you made, looking at the stern post, where it is mortised down to the keel, you told me you [111—41] didn't think she would need a new keel?

A. I didn't say I didn't think so. I said I didn't know.

Q. Don't you remember that?

A. I remember your suggestion. You said, "Does it look all right?" and I said, "So far as I can see now, it looks all right," but I wouldn't swear that it was all right, because all I could see was, as I stated. We couldn't look into the dead-wood. You remember, I told you about that. We even talked about getting permission to tear it off.

Q. The figure that you have given us, of course, allows for, well, a measure of profits for your concern, doesn't?

(Testimony of George Thompson.)

A. Well, it is a figure—it's not exactly a figure either; it's an estimate.

Q. But it allows for a profit to your concern, doesn't it?

A. Why it allows in this way: that I have got to pull that boat out and repair her and still I'd hate like everything to go over my estimate.

Q. But what do you figure—we don't want, of course, to know the details of your business, but what do you allow for the price of labor?

A. What do we allow for the price of labor?

Q. Yes, what do you figure, Mr. Thompson? That is to say, you figure for the cost of your marine ways and the use of your ways and the use of so many men on the job at so much a day?

A. Yes.

Q. How long did you figure the job would take—ten days?

A. The job will take longer than that for me. You asked me that question and I told you I couldn't give you any definite figure on that for this reason: that it might be the only job and maybe, in that time, there are several other jobs there that I have got to take men off and send them on [112—42] other jobs and with men limited—I have only four men at the present time.

Q. And that means, of course, Mr. Thompson, that if other men, whose work is important—clients of yours—want their business done, you have got to try to accommodate them all?

A. I have to, yes.

(Testimony of George Thompson.)

Q. If a rush order comes in, you have got to pull men off this job and send one here and one there? A. Yes.

Q. But assuming that you could work uninterruptedly, assuming that you could go right ahead and stay with the job till completed, how long would it take you?

A. I think about fourteen or fifteen days.

Q. And you reasonably use how many men on that work? A. About six men.

Q. About six men? A. Yes.

Q. And you mean to say that it would take six men fourteen or fifteen days to do the work?

A. I think it really would.

Q. Now, to put her back just as she was before the collision, is that what you mean?

A. Well, that is just taking the boat as she lays on the beach there and putting her in seaworthy condition. That takes in everything that should be done for that boat to go to the sea—paint and everything.

Q. But you think it would take fourteen or fifteen days? A. Yes.

Q. With your crew of men? A. Yes, sir.
[113—44]

Q. And you would do it for \$1,050?

A. Yes; that's my estimate.

Direct Examination by Mr. COSGROVE.

Q. Now, just a question. Would you say she was a well built boat?

(Testimony of George Thompson.)

A. She might be a little overly heavy in places, but to get right down and say how she is fastened, a man would naturally have to tear into her.

Q. But I mean, from the examination that you did make, would you say she was well built or poorly built.

A. That's something that it's pretty hard for me to give an opinion on. I would have to tear into her. You can't judge how she is unless you take out something to see.

Q. Did you find any evidence of decay?

A. Nothing to speak of.

Q. No decay.

A. No; you'd find it a little doughty here and there, but nothing what you would call decay.

Q. And your judgment would be that she was in good condition prior to the collision?

A. Yes, so far as I know.

Mr. COSGROVE.—That's all.

Recross-examination by Mr. MARTIN. [114—45]

Q. Don't you know, sir, that when you looked at it you commented on the fact that she had common wire nails driven into her instead of boat nails? Don't you know that? Didn't you make that observation to me? A. Yes.

Q. You know also that on the cant timbers, aft, where this collision occurred, where she was struck, was sawed stuff, don't you? A. Yes.

Q. And very poorly put in?

A. Well, I couldn't say. You can't see the fas-

(Testimony of George Thompson.)

tening of the frame. Her frame is fastened down to the deadwood in the stern.

Q. Is there any deadwood in her?

A. Yes, there is deadwood from her sleeve log down. You see your sleeve log is built up on your deadwood.

Q. The sleeve log is how high off the keel, about a foot? A. I should judge it must be.

Q. A foot off, about.

A. Maybe built perhaps eight inches off, maybe ten. Maybe one piece between the center of the sleeve log and the upper side of the keel. I wouldn't say, because the water was over there when we was in.

Q. You know that she was built in 1906 by men that were not boat builders?

A. I have heard rumors to that effect, but I don't know the men.

Q. Well, don't you know from the construction of the vessel that she is not a well-built vessel?

A. I wouldn't say she is not well built. The only way I could state would be if I got into her and saw how the fastenings [115—46] were put in, then I might tell whether she was well put together or not. Now, you mentioned that vessel being fastened together with wire nails. Well, I, for one claim that wire nails will hold better than boat nails, providing the boat nail is not clinched. A boat nail is no good in a vessel unless it is clinched. A boat nail is tapered like a wedge and

(Testimony of George Thompson.)

as soon as the nail starts, you can pull them out with your hand.

Q. But you didn't have occasion to examine these nails to see whether they were clinched or not?

A. No, wire nails wouldn't be clinched. If they were going to clinch them, they would be boat nails. It would most likely be a sawed frame.

Q. Mr. Thompson, would you say from the blow that that vessel got that she was, because of her age and original faulty construction, more susceptible to injury?

A. Well, she might be some from the way she was built and the amount of fish she was carrying. She's a boat heavily built and the chances are she felt the shock far more than she would have if she had been a lighter boat.

Q. What is your judgment, looking now to the collision itself and the visual evidences of the collision, from the blow that she received, whether her faulty construction and her age contributed to her injury.

A. Well, she's a pretty sound boat.

Q. In other words, Mr. Thompson, this: if she had been a well built, strong boat, she wouldn't have received near the injury from that blow that she would otherwise?

A. Well, I think she would; I really think she would. [116—47]

Q. You really think she would? A. Yes.

Q. The way those two vessels came together the

(Testimony of George Thompson.)

injury would be just the same on a new vessel as on an old vessel?

A. I can't see anything else.

Q. But her timbers are sprung and the planking of the starboard side is six or eight inches off, out of plumb.

A. She looks as though her stern is knocked over to the starboard about six inches, as near as I can see.

Q. But you know that the stern wouldn't be knocked over to starboard on a new vessel?

A. It most likely would on any old vessel.

Mr. MARTIN.—Just one question. Would she, in your judgment, be worth repairing?

A. I don't hardly think so. I think she's pretty badly shook up.

Q. You mean by that, not being worth repairing, that you could go out and buy a vessel probably just as good as she was at her age, and as to style, type and build, of 13 tons fish carrying capacity probably for somewheres around \$1,000?

A. That is, bare of the engine?

Q. Beg pardon?

A. That is, bare of the engine; that would be for the hull?

Q. Yes. A. Uh-huh. [117—48]

Q. The value of the hull. And that being so—

The COURT.—Did you answer that question?

The WITNESS.—No, I haven't answered it. It would be something pretty hard to say if a man could pick up another boat or not.

(Testimony of George Thompson.)

Q. Well, in the open market, I suppose, as you know, boats have been offered for sale here in Ketchikan, and you know the cost of that work to put her back to where she was before the collision. Knowing this, would you, if you were the owner of such a boat, if you were a prudent, careful man, would you repair the boat or buy a new one?

The COURT.—That's hardly a fair question. The question is, would you repair this hull or buy a new hull to take its place?

The WITNESS.—Well, I don't think I would repair the hull.

Q. Could you build a new hull and replace it for the same price that you could repair this one for?

A. No.

Q. You could not?

A. I don't think so. You can't here, but if you'd go to Seattle, they build boats cheaper there than we do here.

Q. Just let me ask you this question: Could you replace that vessel, not with a new vessel, but could you replace her, a vessel built in 1906, for the amount of money that you would have to spend in repairing it?

A. That is, buy a second-hand vessel?

Q. Yes. A. Well, I dare say you could.

Q. You think you could? A. Yes. [118—49]

Q. In other words, if you had a thousand dollars and wanted to spend it, and figured out the cost of repairs to the boat, you would hesitate before you would put that money into it?

(Testimony of George Thompson.)

A. I would.

Q. You would look about to buy a new one?

A. Yes.

Q. Or buy a second-hand boat?

A. Or buy a second-hand boat.

Q. That is barring the machinery and equipment.

A. Barring machinery and equipment. That is just the bare hull, you might say.

Q. Do you think, Mr. Thompson, that for a thousand dollars, knowing the boat here in Ketchikan, that you could probably pick up a hull to better advantage or just as good advantage as the hull you would have.

A. I wouldn't say in regards to picking up something here in Ketchikan.

Q. But you think you could at least down in Seattle? A. I think down—

Q. (Interrupting.) Or down below in Vancouver or Victoria.

A. I think perhaps you could.

Redirect Examination by Mr. COSGROVE.

Q. In figuring the cost of that hull, you would figure in the cost of the search, I presume, in searching for it?

Mr. MARTIN.—I object, if your Honor please. That, it seems to me is not a proper item.

The COURT.—He may answer.

Q. You would figure in the cost of your trip around the country?

A. No, I couldn't figure in that. If it was myself, I couldn't figure on that myself. [119—50]

(Testimony of George Thompson.)

Q. But what would it cost, in your judgment, to replace the hull with one as near the character and quality of that hull? A. Me?

Q. Yes. A. For me to buy a new one?

Q. Yes. Suppose you had to replace that with a hull of similar character and similar quality, what in your judgment, would it cost?

Q. Would it cost more or less than your cost of repairs?

Mr. MARTIN.—I object, if your Honor please, for this reason: that there is an entirely dissimilar condition. Here is a vessel built in 1906, an old vessel, and you must take that into consideration.

It isn't what you could buy a new boat for or build a new boat for. The question is what would be the reasonable market value of that boat.

The COURT.—Certainly.

Mr. MARTIN.—(Continuing.) Considering a vessel of that age; so I think the question is improper.

The COURT.—He may answer—what he could replace the hull for, of the same kind and character, to his knowledge.

Mr. MARTIN.—(Interposing.) But not to buy a new one. Do I understand your Honor's ruling?

The COURT.—Well, he may answer as he pleases as to that question.

A. I know you couldn't build a new one for that.
[120—51]

The COURT.—He has already answered that he couldn't build a new one for that.

(Testimony of George Thompson.)

The WITNESS.—But I dare say, if a man was below that he could get a boat equal to that boat, that is the hull, in Seattle, barring traveling expenses, for a thousand dollars.

Q. You don't know what his traveling expenses might be? A. No; I don't.

(Witness excused.) [121—52]

Testimony of Nora Ethel Kinyon, for the Libellant.

NORA ETHEL KINYON, called as a witness on behalf of the libellant, having been first duly sworn, testified as follows:

Direct Examination by Mr. C. H. COSGROVE.

Q. Please state your name.

A. Nora Ethel Kinyon.

Q. Where do you live?

A. Mary Island light station.

Q. And does your husband live there with you?

A. Yes.

Q. He is the lighthouse-keeper there?

A. He is classed as the assistant keeper.

Q. Now, were you and he living there on the 23d of July, 1921? A. We were.

Q. Do you recollect anything of an unusual occurrence there on the night of the 23d of July last?

A. I do.

Q. Just tell the Court what you saw that night.

A. Well—

Q. (Interrupting.) Stating the time.

A. About ten o'clock in the evening we—I ob-

(Testimony of Nora Ethel Kinyon.)

served, from our kitchen window, a bright light bound south.

Q. What did you then do?

A. I went to the front of the house, on the porch, where I [122—53] could observe it more closely.

Q. Why did you do that?

A. To ascertain whether it was the mail boat that I was expecting, or not.

Q. You were awaiting the mail boat. What is the name of the mail boat?

A. "Carmen."

Q. You were expecting her from Ketchikan?

A. Yes.

Q. And this boat that you saw, or this bright light, which way was that heading?

A. South, or southerly direction, we call it.

Q. How far away was she?

A. Well, approximately a mile.

Q. What was the condition of the weather that night? A. Very fine.

Q. It was clear? A. It was partly so.

Q. Yes. Any moon?

A. There was a moon at times. It was quite light.

Q. Now, you say that in anticipation of the arrival of the mail boat, you went to the porch, thinking that this bright light indicated the presence of the mail boat? A. Yes.

Q. Now, just go on from there and tell the Court what you saw and did after that.

(Testimony of Nora Ethel Kinyon.)

A. As I entered the porch, I observed a very green light, through an alder tree which stands slightly to, I should say to the left, northwest I guess you would call it—of the house. It's on the lawn, some distance from the house. But [123—54] through this tree, I could observe the green light of this boat, and by the arrangement of the light, I knew that it wasn't the "Carmen."

Q. Oh, you knew it was not the "Carmen"?

A. No.

Q. What did you do after that?

A. I heard the exhaust of another engine; so I listened and I concluded that it sounded like the "Taku's" engine.

Q. Coming from what direction?

A. The southerly direction.

Q. Could you see that boat?

A. No; I couldn't see any lights.

Q. Were you alone at that time?

A. My husband was right near, on the porch, at that time that I heard this.

Q. Oh, yes; this thing. A. This exhaust.

Q. What happened after that?

A. We looked for the lights of this boat and couldn't see none, though we could hear her exhaust distinctly.

Q. That is the boat you saw coming from the southerly direction?

A. From the south. We could discern distinctly the lights of the boat which was southbound. On the north-bound boat we could see no light, but hear

(Testimony of Nora Ethel Kinyon.)

her exhaust very distinctly, and my husband got the glasses and— [124—55]

Q. Could you tell the Court, from the sound of the exhaust of this boat coming from the southerly direction, whether she was traveling at full speed or slowly?

A. She was traveling at full speed, that would be my idea.

Q. Now, did you continue with your husband in that observation? A. Yes.

Q. And if so, how long?

A. Well, for many minutes, because I considered the boats were dangerously near; that is, I considered they were headed for each other, or very nearly so, and I expected a collision.

Q. And your husband stood there with you during that time? A. We both stood there.

Q. Did they collide? A. They did.

Q. Tell the Court the circumstances of that collision as you saw them.

A. A few seconds before the collision occurred, the north-bound boat flashed on her lights and when she struck the south-bound boat, I could distinctly see three lights—a red light, a green light and a white light.

Q. On which boat?

A. On the north-bound boat.

Q. On the north-bound boat. And you say she flashed on those [125—56] lights how long before she struck the other boat?

(Testimony of Nora Ethel Kinyon.)

A. A very few seconds. I couldn't say exactly.

Q. So that when she struck the other boat, she must have been headed for the point where you were standing?

A. Just momentarily, before they struck, the helmsman must have directed his course directly toward us. It seemed to me that he made, simply threw his boat to the starboard, or to our direction—not to starboard, it wouldn't be. It would be to port.

Q. The bow turned to port?

A. Yes; bow turned in our direction. Being north-bound, that would naturally be to port.

Q. Now, had you observed the south-bound boat before that? A. Yes; I observed her.

Q. How many of her lights did you see.

A. At the time they struck, I could only see the white light, because the green had been shut out, being south of us, of the station.

Q. But had you seen her lights prior to that time? A. Yes.

Q. All of them?

A. No; just the green and the white.

Q. Just the green and the white. Did you notice what happened after they collided, if anything.

A. We could hear excited talk, but the only words, or sentence, that I could understand was, I heard one man say, "How did this happen anyway?"

Q. When they collided, what would be your judgment as to the distance the boats were away from

(Testimony of Nora Ethel Kinyon.)

where you and your husband were standing? [126—57]

A. Well, I should judge they were from the shore, from the beach, not over 500 feet, but that is not stating it exactly, as I have no means of knowing.

Q. You heard this voice distinctly?

A. I heard the voice distinctly.

Q. Of course, you couldn't tell which boat it came from? A. No; I had no idea.

Q. Have you since learned the names of those boats? A. Yes.

Q. What is the name of the north-bound boat?

A. The "Eagle."

Q. The "Eagle." And what is the name of the south-bound boat? A. The "Wildwood."

Cross-examination by Mr. W. S. MARTIN.

Q. Mrs. Kinyon, this was what time in the evening?

A. About ten o'clock, as near as I could state.

Q. You and your husband were in your home waiting for this boat to pick you up?

A. No; the boat bring us mail.

Q. Oh, the boat brings you mail?

A. Yes; twice a month.

Q. Your house is how far from the beach?

A. Well, I couldn't tell you exactly.

Q. Was it dark?

A. No; it was a fine night. The moon had fullled on the 19th of the month, I think.

(Testimony of Nora Ethel Kinyon.)

Q. Where was the moon at that time?

A. At the time they struck, they were directly under the sheen of the moon. [127—58]

Q. The moon would be off in the distance, off to the eastward?

A. Yes; it was about, the moon was about north-east by north, at least a half east, the way we were looking from the position we were in at the house.

Mr. MARTIN.—I have a chart I would like to place before the witness, and I would like to offer this as Claimant's Three.

The COURT.—You may offer it for identification and then offer it in your case.

Mr. MARTIN.—(Pointing to chart which has been pinned to wall.) Referring now to Claimant's Exhibit Three, you see where I direct you to Mary Island on the chart. A. Yes.

Q. Well, you tell us just where your lighthouse and your house are on that island.

A. I'll try to.

Q. Point it out.

The COURT.—As near as you can.

WITNESS.—(Examining chart.) I don't know whether everything is given here.

Q. Well, mark it as near as you can.

A. Well, it's marked right here (indicating).

Q. Well, "right here." Just mark the point.

A. "Fog-horn," I think that would be it.

Q. Just mark the point with a pencil. Mark that and let that be known as "Point A."

(Witness does so.)

(Testimony of Nora Ethel Kinyon.)

Q. That is where you have made the point. [128—59] Just say what it says there.

A. "Reed horn," it says there, and there is a star, marking the exact location of the tower.

Q. Now, Mrs. Kinyon, where, when you looked out of your window or from the porch, where did you see this light that you first observed?

A. Well, I can't tell exactly, but it was—I seen it at least half way between Point Winslow and the light right in there.

Q. Just point that out please.

A. It would be something like that (indicating). This is approximately.

Q. Yes.

A. (Examining chart.) Well, we'll say halfway between.

Q. Just mark the letter B there.

A. That is probably farther out from the shore.

Q. Well, it wasn't the right letter, the letter there where you marked that last point.

A. What shall I make it?

A. Just mark it with the letter B.

A. The letter B; yes. (Witness does so.)

Q. How did you happen to observe the light? What was the occasion for it?

A. Well, on this occasion, we were expecting a mail boat. Both of us were there to watch navigation. We see, I think, most every boat that passes in daylight, and, of course, if we are up, we see them by night the same.

(Testimony of Nora Ethel Kinyon.)

Q. And you looked out and saw what light.

A. I saw a white light.

Q. A white light?

A. The mast headlight, I should judge. [129—
60]

Q. Did you see the green light, too?

A. Not at first.

Q. Not at that time? A. Not as I remember.

Q. You just saw the white light; and then did you continue to observe this white light?

A. I passed from the kitchen. The house is, the kitchen—you pass through the dining-room, through the hall and on to the porch.

Q. When the white light was first observed by you, you had, of course, no particular occasion to remember or pay any attention to it. It was just an ordinary light out there in the bay.

A. Yes; I took close observation on account of trying to figure out whether that was the “Carmen” or not, you see.

Q. How long did you watch that white light?

A. Before proceeding to the porch or afterward?

Q. I say, how long did you watch that white light before this collision?

A. Well, it would be several minutes, but I couldn't say just how many minutes.

Q. Then you say that you were attracted to the other boat that turned on her lights? A. Later.

Q. Later.

(Testimony of Nora Ethel Kinyon.)

A. I heard her some time before she flashed on any lights whatever. [130—61]

Q. I mean how far off the island were they?

A. I should judge about 500 feet.

Q. About 500 feet.

A. And south; that is slightly south of the light.

Q. When they did collide, where would you place the two vessels?

A. Well, let's see, I don't know just how this is meant to be, but it would be just a little below, as I observed it from my position, between two old houses and the tower to the south.

Q. That, then, would range, when they came together, would range over towards this other shore?

A. Not necessarily; it could range this (showing) way.

Q. Well, I know; but the vessel would be in the range of this other shore, wouldn't she? That is to say, she would be not square across from your house, but south.

Mr. COSGROVE.—What do you mean, "she"?

Q. I meant to say this vessel that you saw.

A. She was rather east, and farther east than southeast.

Q. Well, just give us a pencil line of the direction of this vessel, the direction this vessel was in when you saw them come together.

Mr. COSGROVE.—Which vessel are you talking about?

(Testimony of Nora Ethel Kinyon.)

Mr. MARTIN.—The colliding vessel; the south-bound vessel. You say that you observed this south-bound vessel from the time that it was opposite your house?

A. It was closer in to the shore than the north-bound boat.

A. Now, you give us a line here, will you, the range of those vessels out there in the darkness, will you, when they collided. Just draw that, will you? [131—62]

A. I would say about like that (showing line drawn on chart). Now, for instance, the house is right here.

Q. Well, "right here." Just mark it, will you?

A. Just about like that (showing).

Q. Well, draw it on the chart.

A. I think that is as nearly as I can tell, because I am not a navigator.

Q. The line would be out about, about southeast.

A. Yes, it would be east of southeast, as I picture it. My directions, my markings here may be very incorrect.

Q. Do you think that line that you have drawn would accurately represent just about the range of that vessel from you, the direction she was in; that is, those colliding vessels?

A. Considering that this is the house, the position of the house is a little different, of course. That would, of course, naturally make the line different, but it was slightly south. [132—63] It

(Testimony of Nora Ethel Kinyon.)

was southeast of the tower and slightly east of south.

Q. You observed the lights all the while, did you?

A. Of this?

Q. Of the south-bound vessel. You observed her range-light? A. I saw a white light.

Q. You saw a green light?

A. Not at that time.

Q. When did you first observe a green light?

A. When I stepped on to the porch, I observed her through this tree. She hadn't gotten abreast of the station then. She was almost abeam, but not quite.

Q. Not abeam or abreast of the station?

A. That is, of our house. The station is a little south or abreast of our house.

Q. Would your house range so that the line of your house would be about east, would be about an east-and-west line?

A. No; I think that the house is set about north-west, and I think the face of our—lets's see; Behm Canal is about magnetic north from us, I think, and the front of our house is to the southern of the Behm canal, as we look a little bit that way, to our left, as we look into Behm Canal.

Q. Does that line that you have drawn fairly represent the direction that these vessels were in when they came together?

A. It does, according to my memory, but I am not familiar with the absolute lines of this. As to

(Testimony of Nora Ethel Kinyon.)

just what the exact direction was, or what the exact course was they took, I might make a radical mistake in that.

Q. Mrs. Kinyon, the principal thing I'm concerned in now is the angle and the direction. Do you believe that that line that you have drawn there represents the line of vision [133—64] where these vessels were out there in the darkness when they came together?

A. Well, I expect, if you were to measure this up on the chart—I followed my memory the best I could, but I wouldn't be certain about that.

Q. Do you recall whether you saw—you say you picked up a green light a little bit after you saw the white light? A. Shortly after.

Q. Shortly after; and you, of course, continued to see the green light?

A. For a few minutes.

Q. Until the point of collision? A. No.

Q. You didn't see the green light then, at the point of collision? A. No.

Q. You had lost the green light?

A. Naturally, when you are right abeam of a boat and she is traveling in a southerly direction, so that close in as she was traveling, her green light at some point—I couldn't state at what point—would be shut out from you, owing to the arrangement of the green light.

Q. That would be shut out?

A. Yes, and it might be burning, just the same.

(Testimony of Nora Ethel Kinyon.)

Q. But you recall that you lost sight of the green light? A. Yes.

Q. You would remember that detail?

A. I remember that.

Q. So that you first saw a white light; then you saw a green light; then you remember losing the green light and seeing nothing but the white light?

A. Yes. [134—65]

Q. Then you say that you saw the lights of another boat flash on?

A. When they were dangerously close.

Q. Well, "when they were dangerously close." You, of course, couldn't see the outline of the hull, could you?

A. Yes, I could discern an object barely with my naked eye, a dark object.

Q. You could?

A. At that time, a dark object; yes.

Q. Even before you saw the lights turned on?

A. Yes.

Q. Which way was the dark object heading?

A. Well, you couldn't—if you see a log out there, you couldn't tell whether it was the end or the side of the log.

Q. You just saw a dark object?

A. I could see this dark object moving.

Q. Then you watched them come together?

A. Yes.

Q. And then saw the lights turned on?

A. I saw—no, the lights were snapped on before we heard the blow.

(Testimony of Nora Ethel Kinyon.)

Q. How far would you say the vessels were apart when the light was snapped on?

A. Well, it is very hard for me to judge, but I would say sixty or a hundred feet, possibly.

Q. You distinctly remember seeing the red and green light of the north-bound vessel?

A. And also the white light.

Q. A white light, too?

A. We saw all of them at the time of the blow. She immediately turned toward us and I heard distinctly the sound of the [135—66] crash.

Q. At the time of the crash, you only saw this one light, that is on the south-bound boat?

A. A white light.

Q. Was that very distinct or rather dim?

A. It was what I should consider a very good light, and I see many of them pass.

Q. How far was that away?

A. I should judge about 500 feet, offshore, or thereabouts. It may have been more or less. More, I should judge, than less.

Q. How far is your house from the beach?

A. Well, I should say, at the tide—the tide was not low then—at the lowest stage of the tide it would be two hundred feet, I should think; that is, if you mean at the farthest point where the light sets. If it were from our house to the landing, it was a very short distance, but the landing is slightly north, northwest of the tower. That is as my directions seem to me. They may not be accurate, but that is what I term them.

(Testimony of Nora Ethel Kinyon.)

Q. And you would estimate the light was what distance from you? A. The light — ?

Q. That is, the lights on the colliding vessel?

A. Oh.

Q. At the time of the collision?

A. Well, I should think about 700 feet.

Mr. MARTIN.—I think that's all.

Redirect Examination by Mr. C. H. COSGROVE.

Q. I would like to have you give the Court your best judgment of the interval *if* time which elapsed between the flashing [136—67] on of the lights on the north-bound boat and the collision?

A. Well, I should say, probably five seconds; not more, I don't believe.

Q. Hardly—

A. (Interrupting.) It was such a short time there was no time for thinking.

Q. I presume your recollection of what you saw that night is very clear; is it not?

A. Certainly.

Q. Have you any way of keeping those matters clearly in your mind?

A. I keep a daily diary of events.

Q. Have you got your diary with you?

A. I have.

Q. Did you make any entry at that time or shortly afterward regarding what happened?

A. Yes.

Q. Would you mind opening to it?

Mr. MARTIN.—If your honor please, I object to that as entirely subservient.

(Testimony of Nora Ethel Kinyon.)

The COURT.—It is not necessary. She testified to all the facts from her memory.

Mr. COSGROVE.—Very well; I withdraw that question, and will ask you whether there is an account in your daily course of keeping a diary. Did you write an account of it in your daily diary of what happened? A. I did as I have seen it.

Mr. COSGROVE.—That's all.

Recross-examination by Mr. W. S. MARTIN.

Q. Do you fix the time at ten o'clock? [137—68]

A. Well, I think it was about ten o'clock. You know, with us, getting our time, we get it from the mail boat and from the ships, etc., at different time. We are sometimes several minutes fast or slow.

Q. And your best recollection would be about ten o'clock?

A. Yes; about; I think it was probably slightly before ten, although I didn't look at the clock. It could have been.

Q. Where was the moon, as you recall, in the sky—up overhead or down on the horizon?

A. No; it was just as I stood on the porch, and the position of the boats were in this direction (indicating) from me, the boats were within the moon sheen.

Q. How high was the moon on an angle from your vision?

The COURT.—About the horizon?

Q. Above the horizon. Considering now that the zenith is overhead and 90 degrees; halfway would be 45 degrees—where was the moon?

(Testimony of Nora Ethel Kinyon.)

A. It was probably—

Q. (Interrupting.) In other words, was it more than halfway up or was it overhead?

A. I don't think it was hardly halfway up. There is a mountain that the moon comes over that's almost in line with this position; but now I couldn't tell you just how high the moon was; but I don't think it was very high at that time. What I mean, the bright part of the moon or sheen, it cast a bright sheen across the water, and I said to my husband, "They'll see each other when they get into the moon sheen."

Q. Now, just a moment; the north-bound vessel would go into the dark area, wouldn't it?

A. No; they would be right in the part of the moon—[138—69]

Q. (Interrupting.) I know, but the vessel coming north would be heading into Point Alba, that is, the high mountainous land there (pointing).

A. No; Point Alba appears high and close from a distance, but next to the water, it is not a high point of land.

Q. It's high land right off Mary Island?

A. Well, it's back from the shore a ways and the distance is at least four miles, I should think, at the nearest point.

Q. Well, now, that was all dark, wasn't it, there?

A. No, because we could see the moon sheen clear across the channel.

Q. You could see the moon—

(Testimony of Nora Ethel Kinyon.)

A. (Continuing.) It cast a sheen clear across the channel.

Q. You could see the moon over across the top of the mountains in the East, but wasn't it dark?

A. It shone over the water; the moon shone right over the water.

Q. Wasn't it dark as you looked toward that opposite shore to the eastward?

A. Not until you would get at least two-thirds of the distance across. I couldn't tell you. There might have been a shadow.

Q. Wasn't it dark to the north and northeast?

A. No.

Q. In other words, isn't there a dark area because of the high land at Point Alba and the eastern shore? A. No; there is not.

Q. You don't think there is?

A. To my observation, there is not, unless I err.

Q. Of course, with these vessels, you were looking off southeast and they were right in the range of the moonlight.

A. But I observed the fine night all throughout the evening. [139—70] Other boats had passed also.

Redirect Examination by Mr. C. H. COSGROVE.

Q. How long have you and your husband lived there?

A. I have lived there since the 18th of last April; that would be a year this 18th of April.

Q. April of last year? A. Yes.

(Testimony of Nora Ethel Kinyon.)

Q. How long has your husband been there?

A. He came, I think, on the 17th day of February last year.

Q. Have you lived there continuously during that time since? A. I have.

Q. Has your husband been located there continuously? A. He has.

Recross-examination by Mr. W. S. MARTIN.

Q. Do you remember whether up to the moment of the collision, you saw the white light?

A. Yes; I could see the light.

Q. You could see the white light? That is, on the south-bound vessel? A. Yes.

Q. You say that you continuously observed the south-bound vessel from the time that she was right squarely opposite your place, or a little north, down to the time before the other vessel flashed her lights on? That is, you could see this white light right up until—

Q. They came together? A. Yes. [140—71]

Testimony of David Oliver Kinyon, for the Libellant.

DAVID OLIVER KINYON, called as a witness on behalf of the libellant, having been first duly sworn, testified as follows:

Direct Examination by Mr. C. H. COSGROVE.

Q. Please state your name.

A. David Oliver Kinyon.

Q. Where do you live?

(Testimony of David Oliver Kinyon.)

A. I'm stationed at the Mary Island light station.

Q. You are the assistant lighthouse-keeper?

A. I am acting as assistant.

Q. How long have you lived there?

A. Since February, 1921.

Q. Does your wife live there with you?

A. She does.

Q. Were you living there on the 23d day of July, 1921? A. Yes.

Q. Was your wife living with you there at that time? A. She was.

Q. You remember the night of July 23, 1921.

A. I do.

Q. Will you state to the Court if anything of an unusual character happened that night, and, if so, what and at what time?

A. There was a collision between two gas boats, at about ten o'clock. I couldn't give the exact time, but it was in the neighborhood of ten o'clock.

Q. Now, just tell the Court how your attention was drawn to the boat, starting just ahead of the collision.

A. Our attention was drawn to the boat approaching from the north by the headlight, or mast headlight, I am not positive which, but it was a light anyway, and the reason we went outside was because we were expecting a mail boat from [142—73] Ketchikan, and my wife called my attention to the light. I was sitting with my back to the light, reading. She said, "There goes a boat. I wonder if it's the mail boat." I said I

(Testimony of David Oliver Kinyon.)

didn't know. She went outside and I stopped to get the binoculars, and when we got out we concluded that it wasn't the mail boat, but for some time we kept watching the boat until she passed out of sight of us on account of the tower. The tower shut off our view until she came on the other side of the tower on the down-channel side.

Q. Did you see any other light on her besides the mast headlight?

A. I wouldn't swear that I did; not myself. I paid no particular attention.

Q. About that time did you pick up any other boat? A. I did.

Q. From which direction was she coming?

A. She was coming up the channel from Tree Point, as near as I could tell.

Q. Did you see any lights on her?

A. I did not.

Q. Did you hear any noise?

A. I heard the exhaust of the engines; yes.

Q. From the exhaust of her engines, would you say she was traveling at full speed or some lesser speed?

A. Well, as near as I could tell, she was traveling at full speed.

Q. Did you put your glasses on her? A. I did.

Q. Pick her up? A. I picked her up; yes.

[143—74]

Q. How long did you observe her?

A. I observed her for probably as much as five

(Testimony of David Oliver Kinyon.)

minutes, at least—well, I should say, not more than four minutes.

Q. Did you observe her from the time you first picked her up until she struck the other boat?

A. Not continually; no.

Q. Did you see her flash any light?

A. I did.

Q. How long an interval occurred, in your judgment, between the flashing on of her lights and the collision? A. Not more than two seconds.

Q. Two seconds. A. Yes.

Q. In other words, there was the flash of the light and then the impact? A. Yes, sir.

Q. How many lights did she flash on?

A. Three, as near as I could tell.

Q. Could you see those three lights at the time she struck?

A. I could at the time she struck.

Q. How far away were these boats from where you were standing, at the time of the collision?

A. Between five and eight hundred feet.

Q. Did you hear any conversation aboard the boats?

A. I heard voices, but I couldn't distinguish but one voice.

Q. What was that that you heard?

A. Some voice exclaimed, "How did this happen, anyway?"

Q. Have you since found out the names of those boats? A. Yes.

Q. What are the names of them? [144—75]

(Testimony of David Oliver Kinyon.)

A. The "Eagle" and the "Wildwood."

Q. Which one was the "Eagle"?

A. The one that was northbound.

Q. And the "Wildwood" was southbound?

A. Yes, sir.

Q. Did you hear, at any time while you were watching the two boats, especially this northbound one that you speak of, that you picked up with your glasses, did you hear her reverse her engines?

A. I wouldn't be positive that I did; no, sir.

Q. How far away do you think she was before you picked her up with your glasses?

A. It was possibly a mile away.

Q. What were the weather conditions that night?

A. Clear; that is, they must have been. It was clear, partly cloudy.

Q. And the water smooth? A. Yes.

Q. And a moon? A. There was at times.

Q. Was the moon shining at the time of the collision? A. Yes; at that particular spot it was.

Q. Could you tell whether the moon was shining prior to the collision?

A. Part of the time. Part of the time it was obscured by clouds.

Q. How long would you say the moon had been shining, casting a sheen over the water prior to the time that these boats collided?

A. Not over five minutes. [145—76]

(Testimony of David Oliver Kinyon.)

Cross-examination by Mr. W. S. MARTIN.

Q. Where was the moon in the sky; that is, overhead or on the horizon?

A. It was about two hours above the mountain-tops, as near as I could judge.

Q. About two hours above the mountaintops?

A. Yes, sir.

Q. That would be halfway up, wouldn't it?

A. No, sir.

Q. Well, the moon would travel—do you know how fast the moon goes up—how it makes its progress across the sky? A. Well, yes.

Q. You do? A. Approximately; yes.

Q. How many degrees in one hour?

A. That I couldn't say.

Q. Fifteen? A. That I couldn't say.

Q. And if it was two hours up over the mountain-tops, and the mountaintops are quite high—those mountains are twenty-seven, twenty-eight hundred feet high?

A. They might be, but they are a considerable ways off.

Q. As a matter of fact, if the moon was two hours up, she ought to be about halfway up?

A. No, sir.

Q. Do you recall clearly where the moon was—whether it was down on the horizon or halfway up? A. It was neither one.

Q. How? [146—77]

A. It was neither on the horizon nor halfway up.

Q. Well, then, possibly halfway up between that?

(Testimony of David Oliver Kinyon.)

A. Possibly halfway between down on the horizon, from the mountains, I should say, down.

Q. Let me ask you this: What is the general range of Mary Island; that is, in front of your house, the shore line? About northwest, or north-northwest and south-southeast?

A. You mean the general lay of the land?

A. Yes; the general lay of the land on the shore line? A. That is—

The COURT.—(Interposing.) That is, the line of the shore.

A. That is, the direction of the shore line?

Q. Yes; the direction of the shore line.

A. Well, I would say, yes; approximately it is.

Q. Approximately, roughly speaking, north-northwest and south-southeast? A. Yes, sir.

Q. And I suppose your house faces out onto the channel and would be at right angles to that?

A. Yes, approximately so.

Q. So that you would be facing the channel, the general range of the shore?

A. Yes; that is the general range of the shore; yes.

Q. Now, where did you say the two ships came together, with reference to the position you were standing in; that is, as to whether the two vessels came together south, way down along the shore line, or right opposite your house or halfway between?

A. They came together nearly opposite our house. [147—78]

(Testimony of David Oliver Kinyon.)

Q. Nearly opposite your house? A. Yes, sir.

Q. Your house would face, would range along parallel with the shore line?

A. No; they do not. There is a point there and the shore line has a bend in it.

Q. You are, then, familiar with the compass points, aren't you?

A. No; I wouldn't attempt any compass work.

Q. How would you say the colliding vessels, at the moment of the collision or impact, how would you say they would have been from your house?

A. You mean the general direction they were from my house?

Q. No; I mean to say now how they would have been, according to the compass point or figures on the chart. There is Mary Island (pointing to chart). A. Yes, sir.

Q. Can you tell us whether the colliding vessels were off here, or off here (indicating), or off here (indicating) to the westward?

The COURT.—Where were they?

Q. Where they were, in other words.

A. Approximately there (pointing to point on chart). Just a moment, now. They were right in here (indicating).

Q. Mark it, will you?

A. As near as I can; yes, sir.

Q. Mark it with the letter C, if you will.

A. Now, let's see; this is the light right here (indicating).

Q. First, let me ask you where did you first ob-

(Testimony of David Oliver Kinyon.)

serve them before you come to point that on there?
Where did you first observe the south-bound vessel?
[148—79]

A. She was about this place here (indicating).
No; wait a minute; I'm too low down. Right
about here (indicating on chart).

Q. Now, you make a C at the point that you
first observed the south-bound vessel. Mark it
with the letter C.

A. Now, you must remember that this is approxi-
mately.

Q. Oh, yes; that's all we can expect, of course.

The COURT.—That is the south-bound vessel?

A. The south-bound vessel; yes. Oh, pardon
me; that isn't the south-bound vessel. Right about
in there (indicating) was the south-bound vessel
when we first picked her up.

Q. Where did the collision occur?

Mr. COSGROVE.—Well, now, you ought to be
able to fix that with a letter or something.

Mr. MARTIN.—Referring to the letter B, al-
ready on the chart.

Q. Will you fix now the point that they came
together as near as you can?

A. Yes, sir; as near as I can. Just a little, right
about in this position right here (indicating).

Q. Where did you first make the letter C? Oh,
here. Why did you put it down where you have?

A. I made that letter there, because I misunder-
stood your question. I got it confused with the
north-bound boat.

(Testimony of David Oliver Kinyon.)

Q. You thought that I was referring to the south-bound boat?

A. No, sir; you were referring to the north-bound boat.

Q. Yes.

A. Or the south-bound boat, and I thought that you were referring to the north-bound boat.

Q. And you would fix the point of the collision, then, where?

A. Right about there (indicating) as near as I could judge. [149—80]

Q. And that would be on a line, so that His Honor can get it; on a line instead of straight in front of your house, or straight down the shore; about halfway between the point directly in front of you and the shore line?

A. No; it wouldn't.

Q. More nearly abeam?

A. You see, our house set here.

The COURT.—Did they collide south of your house?

WITNESS.—They did; yes. They collided slightly south of the house.

Q. Did you observe the lights on the south-bound vessel from the time you first saw them until the time of the collision? A. Yes, sir.

Q. What lights did you see.

A. I seen—I am not certain. I seen a bright white light. I am not certain whether it was a range-light or mast headlight, or what they call it.

Q. Did you see a colored light at all?

(Testimony of David Oliver Kinyon.)

A. I'm not positive. I wouldn't say that I did; no.

Q. What lights did you observe on the vessel coming north?

A. I didn't observe any until about two seconds before the collision.

Q. Well, now, aren't you mistaken in this, that they threw on the searchlight, snapped it on; haven't you got that fact in mind rather than the fixed lights of the vessel?

A. What do you mean, searchlight?

Q. Well, she has a searchlight, hasn't she?

A. She didn't use it, if she had it.

Q. You observed what lights on the boat going north?

A. I observed three lights—the sidelights and a headlight of some description. [150—81]

Q. She was how far away from you?

A. She was between five and eight hundred feet.

Q. You saw no other light at all, now?

A. No, sir; I did not.

Q. Absolute darkness out there?

A. What is that?

Q. I say, it was absolutely dark and black, except for these three lights, or two lights, or how many— Well, I'll withdraw that. How many did you observe? A. I observed three lights.

Q. You observed three lights.

A. Yes; not at the instant she flashed them on, but two seconds after, I observed them.

Q. Two seconds after? A. Yes.

(Testimony of David Oliver Kinyon.)

Q. What lights did you see when she first came up?

A. The side-light and headlight.

Q. What was the side-light?

The COURT.—What color, do you mean?

Mr. MARTIN.—Sir.

The COURT.—What color?

Mr. MARTIN.—Yes; what was the color of the side-light? A. Red light.

Q. You saw her red light? A. Yes, sir.

Q. First? A. Yes, sir.

Q. Saw a red light and one white light?

A. Yes, at that instant.

Q. Saw no range-light? [151—82]

A. No, sir; I did not; that is, unless one of the three lights was a range-light. I don't know.

Q. Then two seconds later you say you saw the other side-light? A. Yes, sir.

Q. The green light? A. Sir?

Q. You saw the other side-light, the green light?

A. Yes, sir.

Q. So then, she must have, in that two seconds, she must have turned to her left and headed toward the island? A. She did; she headed to shore.

Q. She headed toward the shore?

A. Yes, sir.

Q. She must have made a sharp turn?

A. She turned hard over and she came around quick.

Q. From where you first observed her, she would probably make a turn at an angle of eight points.

(Testimony of David Oliver Kinyon.)

A. I don't know anything about that.

Q. Turn a right angle, or pretty nearly so?

A. Turn sharp around; just about as sharp as she could turn.

Q. You saw the lights, the red and green and the masthead. You think that was done in two seconds? A. Sir?

Q. How did you estimate the time?

A. I would estimate that time not more than two seconds. It's an estimate; that's all.

Q. What first attracted your attention to the north-bound boat? A. Her exhaust.

Q. How far away did you hear that from where you were? [152—83]

A. I should judge possibly a mile, being a still night. Probably it was closer; but it was, I should judge it was about a mile, about, when I first saw, or heard the exhaust, and immediately I took the glasses and tried to locate the boat.

Q. At that time you put the glasses on her?

A. Just as soon as I could pick her up.

Q. You could see that she was northbound?

A. I could see she was northbound.

Q. Could you see the range of her sides, or had she presented her side to you?

A. No, sir; not exactly. She was coming at an angle.

Q. But you could see a good part of her?

A. Sir?

Q. I say you could see a good part of her?

A. Yes; I could see a good part of her.

(Testimony of David Oliver Kinyon.)

Q. So, she was heading in a direction that would bring her abreast of your place, about parallel with Mary Island? A. Yes, sir.

Q. That is to say, she was heading in toward the island, but ranging, say, parallel with the shore?

A. Yes; ranging on their ordinary course, as near as I could tell when she was coming up.

Q. The usual course that is followed by vessels going on down the channel? A. Yes, sir.

Q. Does it occur to you that, it being light, that you perhaps wouldn't observe the lights on her?

A. No, sir; it was not.

Q. In that moonlight? A. No, sir. [153—84]

Q. You looked for them and didn't see them?

A. They were not there; I couldn't see them at all.

Q. Of course, if they had been there, you would have seen them?

A. Most assuredly, I would; yes.

Q. Didn't observe any lights in the port-holes?

A. I observed nothing at all. It was dark.

Q. After the collision, what lights did you see?

A. You mean after they had gotten under way again?

A. Yes. What lights did you observe then?

A. I didn't pay much attention to it then. All I could see after they got past the tower was a part view of the headlight, because they headed up the channel a little ways and the side-lights shut out the view to a certain point aft.

(Testimony of David Oliver Kinyon.)

Q. You remember that the vessels, after they came together, were circling around out there, tied together; that they couldn't go ahead and kept turning around?

A. I don't think that they made a circle; I am not positive as to that; but I don't think that they circled at all.

Q. You know that the "Eagle" hooked on to the "Wildwood" and held her up and when they started ahead, they wouldn't steer and kept turning around for some little time?

A. I didn't see anything of the kind.

Q. You didn't see that? A. No, sir.

Q. Of course, if that had been a fact, you would have observed it?

A. Well, it's possible I wouldn't; I might not, because after the collision I took my megaphone—that is, the station megaphone and wanted to know if they needed any help. I got no reply and then we stood there a minute or two watching them [154—85] and walked back to the house. By that time the head keeper was out and wanted to know what the trouble was, and I told him; so we went back to the house. [155—86]

Testimony of Mrs. Nora Ethel Kinyon, for the Libelant (Recalled).

MRS. NORA ETHEL KINYON, recalled as a witness on behalf of the libelant, having been previously sworn, testified as follows:

Direct Examination by Mr. C. H. COSGROVE.

Q. In your former examination, you said that

(Testimony of Mrs. Nora Ethel Kinyon.)

you saw the north-bound boat turn inshore just before the collision? A. I did.

Q. At about that time, I forgot to ask whether you saw the "Wildwood"; that is, the south-bound boat, make any turn? A. She turned inshore.

Q. They both turned inshore? A. Yes.

Q. Just prior to the collision?

A. Just at that time.

Q. And I understood you to say that it was about five or six hundred feet away?

A. No; I wouldn't think they were that far away.

Q. I mean from where you stood.

A. Oh, it was—yes, about 700, I should think, feet.

Q. Do you consider yourself a good judge of distance? A. Well, for a woman, I do.

Q. Upon what is that based, Mrs. Kinyon?

A. Well, I think men are more familiar with measuring and judging distances than women are.

Q. I mean, have you had any experience in and around lighthouses other than in Alaska?

A. Yes, I have.

Q. Where?

A. In 1903 on Destruction Island. That's five miles off the coast of Washington and it is—

Q. (Interrupting.) How long did you live there?
[156—87]

A. About three years and a half.

Q. And then what other places?

A. Then on Puget Sound at Muckilteo Point,

(Testimony of Mrs. Nora Ethel Kinyon.)

on Possession Sound; really a tributary of Puget Sound.

Q. How long did you live there? A. One year.

Q. And then where?

A. Then at Tree Point, Alaska, sixteen months, North Island for three years and on Mary Island one year, and on San Francisco Bay at the East Brother light station. It is really termed the Two Brothers light, but the island which the light is situated on is East Brother.

Cross-examination by Mr. MARTIN.

Q. Mrs. Kinyon, I should have asked you before, did you observe now on the north-bound vessel, any other lights than these that you told us about?

A. Just three, in my memory.

Q. When they were flashed on, do you recall that you saw all three?

A. Not at the moment that they were flashed on—I wouldn't be certain. But at the moment of the collision, I saw all three lights.

Q. She was how far away then; the north-bound boat? That is, from where you stood?

A. About seven hundred feet, I should think. Of course, it would be a little farther, as they hadn't struck, but it was so very few minutes that the distance would be little different.

Mr. MARTIN.—That's all.

Mr. COSGROVE.—That's all. [157—88]

**Testimony of David Oliver Kinyon, for the Libellant
(Recalled).**

DAVID OLIVER KINYON, recalled as a witness for the libellant, having been previously sworn, testified as follows:

Direct Examination by Mr. C. H. COSGROVE.

Q. I understood you to say, in your former examination, that you saw the north-bound boat, or did you say what direction, if any, the north-bound boat took, just prior to the collision?

A. She turned inshore.

Q. She turned inshore? A. Yes.

Q. I forgot to ask you whether you noticed the "Wildwood" make any turn at that time?

A. She also turned inshore, toward Mary Island.
[158—89]

Testimony of Harold A. Brindle, for Libellant.

HAROLD A. BRINDLE, called as a witness on behalf of the libellant, having been first duly sworn, testified as follows:

Direct Examination by Mr. C. H. COSGROVE.

Q. Please state your name.

A. Harold A. Brindle.

Q. And you live at Ketchikan? A. Yes, sir.

Q. Are you the son of Alexander Brindle, who is the libellant in this case? A. Yes, sir.

Q. Were you in charge of the "Wildwood" last summer? A. I was.

(Testimony of Harold A. Brindle.)

Q. Were you in charge of her on the 23d of July? A. I was.

Q. Were you on board of her on the night of the 23d of July? A. Yes, sir.

Q. You remember the collision, then, do you, between the "Wildwood" and the "Eagle"?

A. I certainly do.

Q. Kindly tell the Court, as briefly as possible, the circumstances of the collision, as you remember them.

A. Well, about an hour before that I had gone down below. I was reading for a while and I told the fellow that was the captain of the boat to call me when we got to Mary Island light—

Q. (Interrupting.) What light?

A. Mary Island light. Some time later he called me and told me that we were pretty near the light and what course to take and I told him I would be up in a minute, and I drank a cup of coffee, and pretty soon he called me again and [159—90] I could tell by his voice that there was something wrong, and I immediately grabbed my cap and I was up in about a jump. I was pretty near on deck when she hit. The other boat was right alongside on the port side. The only thing I could see on the other boat was the red port light. That was burning at the time she hit. As soon as she hit, I went down to the engine-room. Well, before I went down to the engine-room, I looked to see whether the lights on the "Eagle" were burning. I could see the red light was burning be-

(Testimony of Harold A. Brindle.)

cause I passed right alongside of the red light when I went down.

Q. Was that before or after the collision?

A. That was after the collision. I was going to stop the engine.

Q. Any lights burning on the "Eagle" at that time? A. Yes.

Q. Did you go aboard the "Eagle"?

A. I did after the boat sank.

Q. Whom did you meet aboard the "Eagle"?

A. How's that?

Q. Whom did you meet aboard the "Eagle"?

A. I met Steve Selig and Al Ames, and I don't know, a Swede by the name of Joe, Joe Olander.

Q. Did you notice anything unusual about that time aboard the "Eagle"?

A. I noticed that Al Ames was drunk. I knew they had whiskey aboard, because I saw it.

Q. Did you go into the pilot-house?

A. I did.

Q. What did you see there, if anything?
[160—91]

A. In the pilot-house there was several empty bottles laying on a bunk back in the pilot-house. Smelling very strongly of whiskey.

Q. Did you talk with Al Ames?

A. I did after everything was made fast. I said, "Couldn't you see our red light"? and he said, "Yes, I saw your red light." I said, "Why didn't you keep away from it?" and he wouldn't answer me. Well, in about a few seconds, Olan-

(Testimony of Harold A. Brindle.)

der he walked off to the stern of the boat, alongside of the tow-line, a kind of a dangerous position to stand in because if the line pulled across or slipped, it might have thrown him overboard, and I told him he better get out of there, and he didn't say anything; so that's about the only time I spoke to him.

Q. And you say he was drunk?

A. He sure was.

Q. What was his position aboard the "Eagle"?

A. Well, at that time, according to this Joe, whatever his name is, Joe Olander, I think it is, he told me that Al Ames, up to the time that he saw our boat and when she was about twenty feet from the "Wildwood," he took the wheel out of Al Ames' hands and put her in reverse. Well, as a matter of fact, I know that he didn't put her in reverse, because—

Q. I knew it was some time after he hit when he put her in reverse. [161—92]

Q. Do you know whether one was made?

A. Yes.

Q. Do you know what that estimate is?

A. \$200.

Q. Now, then, what was the result of that accident, so far as your business is concerned, in which you were engaged at that time?

A. Well, it just put us out of business.

Q. The boat was brought to Ketchikan?

A. Yes, it was brought to Ketchikan by Steve

(Testimony of Harold A. Brindle.)

Selig and put in the creek where we took the fish out of her. [164—95]

Q. Did you make any effort to get any other boat to continue the business?

A. Well, at first I asked Steve Selig if he would take those fish to Prince Rupert, and he told me he was going to Prince Rupert that day. As a matter of fact, I know that he didn't go to Prince Rupert until the next day, but he wouldn't take the fish, so I had to rustle around and get the fish to Prince Rupert.

Q. Did you attempt then to get another boat to take its place?

A. Yes I spoke— There's three different boats I tried to get and neither one was available. I tried to get the "Venus" and the "Progressive" and I tried to get the boat owned by the Southern Alaska Canning Company, of about the same size as ours. [165—96]

Q. Mr. Brindle, who was with you on board the boat at the time of the collision? A. Leo Ryan.

Q. You say you were in charge of her?

A. I was in charge from the owner.

Q. You were in charge from the owner?

A. Yes.

Q. That is Mr. Alexander Brindle?

A. Yes, sir.

Q. How old are you? A. Nineteen years old.

Q. Then you are not the registered master of the vessel?

A. I was not the registered master, no.

(Testimony of Harold A. Brindle.)

Q. And Mr. Leo Ryan, I believe was.

A. F. Ryan.

Q. Huh? A. F. Ryan.

Q. F. Ryan. How old is he?

A. I don't know; I never asked him his age.

Q. He is around here?

A. I guess he's in the back room or somewhere around. [171—102]

Q. You left Ketchikan that night at what time?

A. Well, maybe one or two minutes past seven o'clock in the evening.

Q. What time did this collision occur?

A. Well, as close as I can figure, it occurred between five minutes past ten and twenty minutes past ten.

Q. How far away was the "Eagle" when she was first observed?

A. I didn't observe it; I can't tell.

Q. You don't know except as you get it from Mr. Ryan? A. Yes.

Q. You were down below? A. Yes.

Q. As a matter of fact, you were lying down in your bunk, asleep? A. I was not.

Q. Didn't have to be wakened or called?

A. He just called, to get the course. He said, "What's your course from Mary Island to Tree Point?" and I said, "I'll be up there just as soon as I have a drink of a cup of coffee." That was about a quarter to ten.

Q. When he asked you for the course?

(Testimony of Harold A. Brindle.)

A. Yes. I told him to call me when he got to Mary Island.

Q. Did you keep a log of your trip?

A. We always keep a log of the trips.

Q. Did you make a log-book entry of it?

A. No; I didn't enter every point we went by. I just used the log for one or two points, depending on how the weather was. I kept a log of the running hours and always figured on my oil.

Q. You personally, then, don't know anything about the conditions out there that evening, how far away the vessel was [172—103] what course you were steering or what course the other vessel was steering?

A. I don't know what course the other vessel was steering, but I know what course we were steering.

Q. You know what course you gave him?

A. Yes.

Q. You don't know as a matter of fact what course you were actually steering, do you?

A. Well, I know when he came down, I got out of my bunk and looked over and I could see just where it was. I know he wasn't yet to the light. I know approximately where he was.

Q. What course did you give him?

A. I gave him southeast, half east.

Q. Southeast, half east? A. Yes.

Q. That course would take you how far off Mary Island?

A. You're supposed to take that light. That

(Testimony of Harold A. Brindle.)

course is from Mary Island light down to Tree Point.

Q. That is, how far did that course actually carry you off Mary Island? That is the course he was running?

A. You wouldn't take that course until after you got off the lighthouse.

Q. How far— When you gave that course, how far off were you?

A. I should say seven or eight hundred feet, maybe a little bit farther; maybe a little closer.

Q. You didn't go up on deck?

A. I looked outside, between Twin Island and Mary Island, between—well, I'd say, less than a quarter of a mile from the light.

Q. When you came down from Ketchikan, approaching Mary Island, [173—104] on what side did you pass Twin Island?

A. I told them to go outside of Twin Island, outside of Hog Rocks, or on the side away from the island.

Q. You mean outside—

A. I took the steamboat course.

Q. Did you pass Twin Island on your starboard or port side?

A. I passed Twin Island on my starboard side.

Q. Starboard side? A. Yes; going south.

Q. I see. How did you first know that there was another vessel approaching?

A. Well, when I first found out was just as I stepped out and saw her hit her.

(Testimony of Harold A. Brindle.)

Q. You saw the collision? A. Yes.

Q. So that you personally don't know what transpired on deck, do you?

A. No, not until after it happened.

Q. Then you went aboard the "Eagle"?

A. I did not. I went out and then I went down and threw out the clutch, stopped the engine and I took some lines on the "Wildwood," made them fast and I passed them on to the "Eagle," and they made them fast.

Q. They helped you, of course?

A. Yes, by giving advice and making the lines fast.

Q. Then you say that you went aboard?

A. Yes.

Q. And you went down into the "Eagle's" cabin.
[174—105]

A. I didn't say that I went down into the "Eagle's" cabin.

Q. Oh, you didn't?

A. No, I haven't said that yet.

Q. Well, did you? A. Yes, I did.

Q. You say that you observed Al Ames drunk?

A. I did.

Q. Didn't take any samples of the liquor, did you?

A. No, but it was offered to me, if I wanted it.

Q. But you don't know what it was.

A. I know whiskey when I smell it.

Q. You didn't get any? A. Huh?

Q. You didn't get any? A. No; I didn't.

(Testimony of Harold A. Brindle.)

Q. And all, then, you have got to go by is that you think he was drunk?

A. I don't think he was drunk; I know he was drunk.

Q. You know that he was drunk? A. Yes.

Q. That is your own fair statement. You want the Judge to believe that this man was drunk?

A. I certainly do.

Q. And you and your own men were all right?

A. Well, I know we weren't drunk.

Q. What time did it occur, the collision? What time did the boats come together?

A. The exact minutes?

Q. Yes.

A. Well, I don't understand the question. What time in the evening? [175—106]

Q. I said, what time did the collision, did these vessels collide?

A. Between a quarter past and twenty minutes past ten. That is as close as I can give it to you.

Q. How far away were you at that time from Mary Island?

A. Oh, I should judge about seven or eight hundred feet, or something like that, offshore.

Q. How much sleep did you get during the twenty-four hours [176—107] immediately before this collision?

A. Well, we left Port Conclusion at about two in the afternoon and I judge I slept from six o'clock that evening— Well, I didn't sleep either. I laid down from six o'clock that evening to about

(Testimony of Harold A. Brindle.)

nine, I guess it was. Then I took the wheel till about twelve, and then I slept; then I took the wheel at about two in the morning and then I slept from two in the morning to about half past nine; half past eight. Then I took the wheel. I cooked breakfast and Leo went down to sleep at half-past eight, and I should judge he slept the rest of the way into town. So I guess I must have had about six hours and a half of sleep, seven hours' sleep. [177—108]

Redirect Examination by Mr. COSGROVE.

Q. Have you had much experience on gas boats?

A. I have been on gas boats ever since I have been six years old.

Q. Thoroughly familiar with the business?

A. Quite well.

Q. And navigation?

A. Well, I know how to handle them. I don't know deep sea navigation.

Mr. COSGROVE.—That's all.

Recross-examination by Mr. MARTIN.

Q. You are familiar with the cruising rules, the collision rules? A. How is that.

Q. The collision rules. A. Yes. [191—124]

Q. Do you know about the passing rule?

A. Yes, sir.

Q. What is your duty in passing vessels, when you are in line so as to be end on?

A. How is that?

Q. I say, meeting, now, under the passing rules, what is your duty as a gas boat man?

(Testimony of Harold A. Brindle.)

A. In passing a vessel?

Q. Yes.

A. It depends upon how far you are going to pass her.

Q. What is your duty?

A. You're supposed to give her a whistle the side you want to pass.

Q. Which side do you pass?

A. If I was a half a mile off some boat's starboard side, I would pass on the starboard side; but if I was coming head on, or about so, and wanted to pass on the port side, I would pass on the port side by giving one whistle.

Q. Well, now, we'll assume that there are two vessels meeting end on. What is your duty?

A. Meeting head to head?

Q. Yes; head to head.

A. Well, supposing they were going to collide?

Q. No; I said what is your duty when you see a vessel coming towards you, right in line with you, head on?

A. Blow one whistle and put your helm hard to port.

Q. What is your duty under the crossing rule?

A. Crossing a boat's course?

Q. Yes. [192—125]

A. Well, it depends on which way you are going to cross, whether you had a right to cross. If you were running on a southerly course and a boat was cutting across your bow and she would be showing a red light and you would be showing a green

(Testimony of Harold A. Brindle.)

light, and if you hit her, you would be liable. You can't proceed. But she's supposed in that case, to stop, back up and get out of the way whichever way she can. You're supposed to keep a straight course.

Q. You are supposed to keep a straight course, now, when you see a vessel coming from which direction?

A. Well, suppose, you're running south, that vessel would be coming, running on a southerly course, she'd be coming approximately—

The COURT.—(Interrupting.) What's the purpose of this examination? He is not the captain of the boat. He wasn't in charge of the boat at the time of the collision.

Mr. MARTIN.—Only, your Honor, it may be material perhaps in the examination of the other witnesses, depending upon this man's testimony. This young man has answered Mr. Cosgrove that he was an experienced gas boat man. He stated just now that he had been on gas boats all his life and is familiar with the rules of the road.

The COURT.—You want to test his familiarity?

Mr. MARTIN.—Yes.

The COURT.—I don't see the materiality of it. He was not in charge of the boat, and not knowing any of the circumstances, not being in charge of the vessel at the time, I don't think it is material.

Mr. MARTIN.—At this time I move, for the purposes of the record, to strike out all the witness' testimony, to strike out from the witness'

(Testimony of Leo Frank Ryan.)

testimony all the statements made by [193—126] him as to these speculative or fanciful profits. There is no true measure of damages shown; there is no true measure of loss.

The COURT.—You may put your motion of record. Dictate it to the reporter. I will deny the motion at the present time.

Mr. MARTIN.—Your Honor will give me an exception, please.

The COURT.—Certainly.

(Witness excused.) [194—127]

Testimony of Leo Frank Ryan, for Libellant.

LEO FRANK RYAN, called as a witness on behalf of the libellant, having been first duly sworn, testified as follows:

Direct Examination by C. H. COSGROVE.

Q. Please state your name.

A. Leo Ryan; Leo Frank Ryan.

Q. Where do you live?

A. Lived in Ketchikan for the past—

Q. (Interrupting.) How long have you lived here?

A. For three and a half years.

Q. What is your business?

A. Well, I work in shipyards. That's been my business most of the time; work in shipyards and around these small gas boats pile-drivers; places like that.

Q. Were you master of the gas boat "Wildwood" on the 23d of last July? A. I was.

(Testimony of Leo Frank Ryan.)

Q. At the time the "Eagle" collided with her off Mary Island? A. I was.

Q. At that time who was aboard with you?

A. Harold Brindle.

Q. About what time in the evening did it occur?

A. About ten twenty.

Q. And where?

A. Just past Mary Island light.

Q. How long had you been on the "Wildwood" before the collision? A. About three hours.

Q. What time did you leave Ketchikan that day?

A. About seven o'clock; seven o'clock exactly.

Q. You keep a log-book? [204—137]

A. We had a log-book aboard.

Q. You know what has become of it?

A. I don't. I never seen it since the accident.

Q. Have you learned what became of it?

A. I have not.

Q. Anybody told you what became of it?

A. So far as I can make out, it must have been lost.

Q. You started from Ketchikan at what time, did you say?

A. Seven P. M., the night of the 23d.

Q. You remember what course you took from Ketchikan? A. I pursued several courses.

Q. Well, before you reached—headed down the channel, bound for what place?

A. Bound for Prince Rupert.

Q. Now, did you have your lights burning?

A. All the lights were burning.

(Testimony of Leo Frank Ryan.)

Q. Now, just tell the Court what happened. Tell the circumstances of the collision; what you remember about it. A. About seven—

Q. (Interrupting.) Let me ask you this question first: What sort of night was it? What were the weather conditions? A. Moonlight night.

Q. Water smooth?

A. Water was perfectly calm.

Q. Clear? A. Clear night.

Q. Just go ahead and tell what happened.

A. Well, about six or seven minutes before we got to Mary Island light, I went down and hollered to Harold—he asked me to [205—138] call him when we got to Mary Island—and I also asked him the course from Mary Island to Tree Point. He was down there where he had a light handy, and I didn't want to light the light in the pilot-house to look it up in the little log-book. He gave me the course and I went back and put her on the course he give me and was holding her on that course, when all of a sudden I thought I seen a shadow ahead and just then the lights of a boat flashed on, headed straight at me on the port bow. I seen the headlight and the two side lights of the boat. I seen them all at the same time, and I promptly swung the helm to port, which put the boat to starboard, and she rammed us right there.

Q. When you put your helm to port and swung her to starboard, that would head you, so far as Mary Island is concerned, would it head you toward the island or out from the island?

(Testimony of Leo Frank Ryan.)

A. It headed about toward the island.

Q. Toward the island? A. Toward the island.

Q. What did you notice the other boat do?

Which way did she swing?

A. She swung toward the island, too.

Q. She swung toward the island, too?

A. Yes.

Q. And hit you? A. Yes.

Q. Where did it hit the "Wildwood"?

A. About eight feet from the stern on the port side.

Q. Now, how long before she struck you did you see her flash her lights on?

A. Not more than three or four seconds. [206—139]

Q. When did you first see her?

A. Well, I wasn't positive that it was a boat until the lights flashed on. It was just about, maybe a half a second or a second before the lights flashed, because I had just noticed it.

Q. How far, in your judgment, was she away from you when she flashed on her lights?

A. Not more than 125 feet, I don't think; about a hundred or a hundred and twenty-five feet; possibly less.

Q. What happened after the collision?

A. Well, after the collision, I hollered to Harold at the time of the collision and he came out, and he hollered to me to get aboard the other boat, and after I got out of the pilot-house and went on the other boat and we put lines on the "Wildwood"

(Testimony of Leo Frank Ryan.)

and got her in tow and headed for Ketchikan. We were undecided for some little time whether to take her to Customs-house Cove or to Ketchikan and finally decided on towing her to Ketchikan.

Q. When you went aboard the "Eagle," what part did you go on?

A. Walked toward the tow bitts on the after-end of the "Eagle."

Q. Did you meet any of the crew?

A. I met two of the crew.

Q. Which ones?

A. Al Ames and the other gentleman, I don't know.

Q. What position did Al Ames occupy aboard the ship? A. Deckhand, I presume.

Q. Al Ames?

A. Well, he was at the wheel at the time of the accident.

Q. Did you notice his condition as to sobriety?

A. He was drunk. [207—140]

Q. Did you have any conversation with him?

A. Well, I did; yes; that is, in a way I did. Harold and I—Harold asked him if he seen our port light, and he stated he didn't see our port light. Another thing he did, he walked out to the stern of the "Eagle," in a very dangerous position because those lines were awful tight and it was swinging first one way and then another, on account of being submerged under water, and if one of those lines would have swung one way or the other, it might have thrown him overboard. He stood there

(Testimony of Leo Frank Ryan.)

and didn't seem to notice his danger, and seemed to be very drunk. He stood on the deck, over by the starboard side of the "Eagle," and he was speaking to us afterward and he was swaying from side to side.

Q. Were you in the pilot-house of the "Eagle"?

A. I stepped into the pilot-house for a little while.

Q. What did you notice there?

A. I noticed six or seven empty bottles, beer bottles.

Q. About how far off Mary Island shore were you at the time of the collision, if you can give us your judgment?

A. I don't know the exact distance offshore, but it wasn't no great distance, probably between 500 and a thousand feet. I hadn't noticed it. I am not sure just exactly what the distance is—somewhere around there.

Cross-examination by Mr. MARTIN.

Q. Mr. Ryan, how old are you, sir? [208—141]

A. Twenty years of age.

Q. Where were you born?

A. I was born in Muskegon, Michigan.

Q. When were you twenty?

A. September 4, 1921.

Q. You had not then reached your twentieth birthday?

A. I hadn't reached my twentieth birthday.

Q. What has been your experience with gas boats?

A. Well, I worked around for J. L. Smiley at Charcoal Point, and I worked on other boats, a day

(Testimony of Leo Frank Ryan.)

or two here and a day or two there. I worked on the "Wildwood" previous two months, and I was on several small gas boats. [209—142]

Q. The "Wildwood" last February was placed in your charge, wasn't she? You made out, or took out your master's certificate or made a statement that you were in charge of the "Wildwood" last February? A. I did.

Q. A year ago? A. Yes.

Q. You had never been master of the "Wildwood" before that? A. No.

Q. You served on her, then, for about two months?

A. About two months.

Q. Had you ever been, before that, master of any vessel? A. I had not.

Q. That was your first experience?

A. First experience.

Q. How long had you served on gas boats before going on as master of the "Wildwood" in February?

A. Probably six months on different boats.

Q. Boats as large as the "Wildwood"?

A. Smaller boats than the "Wildwood."

Q. The "Wildwood" is a vessel 45 feet over all, isn't she? A. Forty-five feet over all.

Q. Now, what vessels did you serve on?

A. Well, I served on a little boat over at Smiley's that belongs to W. It's a boat 32, 33 feet long.

Q. What was her name?

A. There was no name on it. It was No. 5.

Q. That is a little trolling boat? [210—143]

A. Small trolling boat.

(Testimony of Leo Frank Ryan.)

Q. And you served on what other boats?

A. Well, I have been on the "Olympic," at J. L. Smiley's cannery, several times, for a day or two at a time.

Q. And so, Mr. Ryan, except for a day or two at a time for a few months before last February, you have had no experience on boats?

A. On large gas boats?

Q. Yes. A. No.

Q. Then you stayed on her two months and went elsewhere and were away from the "Wildwood" for some little time? A. I was away.

Q. When did you join the "Wildwood"—just immediately now before the voyage on which the collision occurred? A. About twelve days before.

Q. The "Wildwood" makes what rate of speed?

A. About seven and a half knots an hour.

[211—144]

Q. That would be a speed of about a little over eight miles an hour? A. Little over eight miles.

Q. Eight land miles. Were you going full speed at or before the collision?

A. I was. Well, we wasn't going—we could have gave her probably a trifle more if we wanted to or had to in a pinch, but we were going at the customary full speed?

Q. Customary, usual rate of speed? A. Yes.

Q. That would be a little under your maximum of seven and a half knots an hour?

A. We was going at about the rate of seven and a half knots an hour then.

(Testimony of Leo Frank Ryan.)

Q. You say you called down below to get your course from Mr. Brindle, young Mr. Harold Brindle?

A. I called down below to wake him up. He was asleep and I also asked him the course, but I didn't call exactly for the course, because he was coming on watch anyway.

Q. Then, you didn't know the course very well?

A. I didn't know the course.

Q. Sir?

A. I didn't know the course up until the time I asked him.

Q. You passed off Mary Island just before the collision at about what distance?

A. We hadn't passed.

Q. How far—I'll put it this way. How far off Mary Island were you when the collision occurred?

A. Well, as I stated before, I don't know the exact distance. [212—145]

Q. What is your estimate?

A. Between—I wouldn't make any estimate, because I really don't know, but it was between 500 and a thousand feet; somewhere around there.

Q. Wouldn't be more nearly a mile?

A. No; I don't think it would.

Q. Isn't that the course usually pursued by vessels that go down Revillagigedo Channel, making for Tree Point, on the way to Prince Rupert? Don't they usually keep about a mile off Mary Island in making their course?

(Testimony of Leo Frank Ryan.)

Mr. COSGROVE.—Are you referring to the steam boat course, or small vessels?

Mr. MARTIN.—Small vessels; small vessels of the type of cannery tenders and gas boats.

A. Well, I don't know, because I only made one previous trip, and I took the same course the trip before.

Q. Do you know that there is a reef that makes out from Mary Island that runs out there about 700 feet, just this side of the lighthouse?

A. I hadn't noticed it on the chart.

Q. You hadn't noticed that?

A. I hadn't noticed it.

Q. Of course, if there was such a reef, it is reasonable and fair to keep some distance outside of it?

A. It would be if I knew it was there.

Q. How?

A. If I had known the reef was there, I would have kept clear of it.

Q. You say, Mr. Ryan, that you saw the outline, the shadow, [213—146] the outline of the boat that you learned afterwards was the "Eagle," the colliding boat, some few seconds before the lights were flashed on?

A. About a second before the lights were flashed on; then saw the shadow.

Q. You saw the shadow? A. Yes.

Q. What was the condition of the moon?

A. Well, the moon was—

Q. (Interrupting.) High up in the heavens or low down on the horizon at that time?

(Testimony of Leo Frank Ryan.)

A. I hadn't paid any attention particularly to the moon at that time, but I know it was pretty high.

Q. It was pretty high?

A. Yes, because an hour before I had noticed that it was up above the mountains.

Q. Up above the mountains an hour before?

A. An hour before.

Q. Do you know how fast the moon travels in its transit from the horizon to the zenith?

A. I never figured it out. I don't know because I have never figured it out.

Q. Where would you say the moon was with reference to being halfway up, keeping in mind now the distance from the zenith right overhead, down to the horizon, whether it was half way up, three-quarters, or one-quarter?

A. Well, I'd say it was halfway at least. [214—147]

Q. What quarter of the moon was it—that is, how large was the moon; that is, having in mind, now, the size of the moon as you know it in the heavens when it is full or when it is a new moon, or the first quarter or the last quarter?

A. It was nearly a full moon.

Q. Was it a clear night?

A. It was a clear night.

Q. Sea was calm? A. The sea was calm.

Q. And nearly a full moon. If you had been alert and had been looking, you would have seen the hull of the "Wildwood," or rather the hull of the

(Testimony of Leo Frank Ryan.)

“Eagle” some distance away, wouldn’t you, a half a mile away or a mile?

A. I don’t know as I would, because when I was looking out at night, I expected to see lights, if there was a boat in the distance.

Q. Yes, but with a moon, now, nearly full and half way up on the horizon, clear night, not obscured, you could see the outline of the “Eagle” on the water some distance away, couldn’t you?

A. If I had been looking over my port bow and watching closely, I might have seen it. [215—148]

Q. But you know, from your experience on the water, that on a moonlight night you can see a vessel on a clear night, some distance away, several miles away, if you are looking for it? A. No.

Q. On this occasion, you did, however, see her, as you say, one, two or three seconds before?

A. I didn’t know whether it was a big log or a boat or just a shadow on the water, until the lights flashed on her, on the boat.

Q. Were you able to make out the outline of this boat in the moonlight before the lights were flashed on?

A. The lights flashed on so quickly after I seen the shadow that I didn’t get a chance to examine or look real closely for the mast or the pilot-house.

Q. You think that the “Eagle” was 125 feet away from you?

A. Somewhere in that region; hundred, hundred and twenty-five feet.

(Testimony of Leo Frank Ryan.)

Q. Your boat would travel how many feet per second at the rate of seven and a half knots an hour?

A. Well, I have never figured it up.

Q. Well, that is a matter of easy computation?

A. Well, I don't—

Q. It would be approximately ten or eleven feet a second. Now [216—149] if you had to go a distance of a hundred feet, traveling at that rate of speed, it would be about ten seconds, wouldn't it?

A. About ten seconds?

Q. Before you would have met up with the other boat?

A. If the "Wildwood" goes ten or twelve feet a second.

Q. You put the wheel hard to port, didn't you—you put your helm to port?

A. I put the helm to port.

Q. And in putting it to port, you would, of course, roll it down to the starboard side? A. Yes.

Q. That would take your vessel to the right?

A. Took my vessel to the right.

Q. Where, with reference to the line of your bow, was the "Eagle" when you first observed her?

A. Off the port bow of the "Wildwood."

Q. Well, the port bow may be considered as the line from the keel around to a point nearly abeam, may it not?

A. Well, I would say right about port quarter.

Q. How?

(Testimony of Leo Frank Ryan.)

A. I would say, then, port quarter on the bow. It was about six feet back from the bow on the port side, right over there that I seen her.

Q. Where did she hit?

A. She hit eight feet from the stern

Q. Yes, but now, keeping in mind the line of your keel—

The COURT.—(Interrupting.) He answered that question by [217—150] saying that it was about six feet from the stem of the boat on the port bow. That is when he first saw her.

Mr. MARTIN.—That, your Honor, would not be very definite—six feet.

Q. Do you mean at an angle, or measured about six feet right at the bow of your vessel?

A. Well, looking from the middle of the boat, straight above the keel, looking at the front window, it would be about six feet from the stem on the port side.

Q. Do you know what distance a compass point would make on the horizon on your boat—one point on your boat?

A. I don't know exactly.

Q. How many compass points would it be from the bow around to a point abeam?

A. It would be eight points.

Q. And halfway from your bow to abeam, looking on the line of the keel, halfway would be four points? A. Yes.

(Testimony of Leo Frank Ryan.)

Q. Or an angle of 45 degrees.

A. Or an angle of 45 degrees.

Q. And from that point halfway, that 45-degree angle, there would be four compass points between there and the bow, wouldn't there?

A. There would.

Q. Now, you say you saw the "Wildwood" or rather the "Eagle" how many compass points on your bow?

The COURT.—Off your bow. [218—151]

Mr. MARTIN.—Yes; off your bow.

A. About two points.

Q. When the lights were flashed on, you saw all three lights, you say?

A. Three lights on the gas boat "Eagle."

Q. That is, you saw the green light and the red light and the white mast headlight, white mast headlight? A. Yes; the white mast headlight.

Q. Well, then, she couldn't have been quite so far over to the right, or off, rather, to your left, because you wouldn't have seen all three lights if she was.

A. She was coming towards me at such an angle that I couldn't see them all, and she was headed for the port bow, as I said.

Q. But according to your estimate, the bow of your vessel would only have to veer so that it was—to get this clearly—I withdraw that question. Using this (showing) by way of illustration, let this line represent the line of your keel, and the line of my brief case represent your beam. Four compass

(Testimony of Leo Frank Ryan.)

points would be halfway between, wouldn't it? or a 45-degree angle from the line of your keel?

A. Uh-huh.

Q. And two points would be half of that?

A. Half of that.

Q. Or a line twenty-two degrees and thirty minutes; 23 degrees from the line of your keel, she only had to veer that distance to miss this vessel. If she was two points on your [219—152] bow, you only had to veer or swing two points to clear her?

A. Two points would have cleared me.

Q. Would have cleared you; yes.

A. Providing that the other boat did the same.

Q. Now, the other boat hit you on the port side aft? A. Yes.

Q. The other boat did the same thing that you did, didn't it?

A. The other boat went over to its right; to its starboard? A. No; it came to its left.

Q. It came to its left? A. It did.

Q. How would it, being only two points on the bow when you first observed her, how did it get down here, hit you way down aft, on the stern, if you had been swinging to the right and if she had been swinging to the right? In other words, to be fair about it, wouldn't that indicate, as you were struck, that the colliding vessel had likewise swung to her right and nearly cleared you? In fact, if she had gone about eight feet farther, she would have gone around your stern, on your port side. Wouldn't it so indicate?

(Testimony of Leo Frank Ryan.)

A. Well, I can't say that it would.

Q. Well, if he had gone to his left at the point where you first observed him, two points off on your port bow, would he crash into your bow forward of the beam? Wouldn't he have crashed into your side somewheres about amidships?

A. He would have; yes.

Q. How?

A. He would have, if I hadn't altered my course.
[220—153]

Q. Well, don't you think that you had a chance to get out of his way in the hundred or hundred and twenty-five feet that you had to go?

A. Well, I don't know that I did have a chance, because I did the best that I could by throwing the boat hard to starboard and if he did the same thing, probably we wouldn't have had the collision.

Q. Well, you said a moment ago that you threw your wheel hard aport.

A. No; I said that I threw the boat hard to starboard.

Q. Do you mean that your boat went to starboard or went to port?

A. The boat went to starboard?

Q. The boat went to starboard? A. Yes.

Q. That is, you put your wheel hard to port and your boat went to starboard? A. Yes.

Q. You say, to the best of your judgment at this time, that you were only a thousand feet off Mary Island?

(Testimony of Leo Frank Ryan.)

A. I said it was between five hundred and a thousand feet.

Q. Between 500 and a thousand feet? A. Yes.

Q. Do you recall making the statement to the Collector of Customs, in answer to a question, that you were one mile off Mary Island?

A. Well, I may have imagined that then, but I didn't know the difference, and I never thought about it when I gave that.

Q. Well, you recall making that statement don't you? A. I recall putting it down. [221—154]

Q. You put it down in writing, over your own signature, that you were a mile off Mary Island when this collision occurred?

A. I put it down as about a mile, if I am not mistaken.

Q. In answer to rule 24, or question 24, report of casualty, the question being thus: "Locality of casualty, giving precise point of land or other obstruction, in case of stranding," and you answered, "One mile off Mary Island light." Do you recall that?

A. Well, I recall putting in one mile, but I thought that I put it about one mile.

Q. Well, if you said at that time one mile, would your judgment then be more accurate than it is now?

A. Well, I don't know, because I did not pay any attention to Mary Island after the accident occurred.

Q. You say, after putting your wheel over and

(Testimony of Leo Frank Ryan.)

the vessel, the two vessels came together, that you went aboard the "Eagle"?

A. I went aboard the "Eagle."

Q. Did you then immediately go into the pilot-house?

A. No; I went down to the stern of the "Eagle" and helped take in the anchor line that we made fast to the "Wildwood" to tow her with.

Q. Well, you were on deck, weren't you until the boats had been made fast and the work was nearly done? A. I was.

Q. Your observation that Mr. Ames was drunk is based upon your ability to look at him, size up his appearance out there in the darkness on the deck? You didn't go in under the light, did you? [222—155]

A. I'm sure he was drunk, and it wasn't so dark but that I could tell he was drunk.

Q. Well, Mr. Ames is very taciturn, silent sort of man, isn't he?

A. Well, I don't know. I have never met Mr. Ames before nor since.

Q. You never met him? A. Never met him.

Q. You don't know that his habit is to habitually keep quiet and say but very little to anybody? A. No; I don't.

Q. You don't know that. What was there in his appearance that indicated that he was drunk—incoherent speech?

A. Not in his speech exactly, but the way he walked and he tried to roll a cigarette and he was

(Testimony of Leo Frank Ryan.)

trembling, and then standing in a dangerous position on the boat.

Q. That would be quite natural under the circumstances, in the excitement attending the collision, wouldn't it?

A. Yes, but I could smell alcohol on him, too.

Q. Now, isn't that really to be fair about it, isn't that Mr. Brindle's suggestion? Didn't Mr. Brindle look at him and say, "They have come from Prince Rupert; they have got whiskey aboard"?

A. Mr. Brindle came back and asked me—he says, "Do you smell any booze around here?" and I stepped up—I just happened to step over by Al Ames at that time and I smelled it and I said, "I do," and I watched him very closely.

Q. Mr. Brindle, in fact, said, "She's just come from Prince Rupert and she's got booze aboard. Let's look for it." Didn't he? [223—156]

Q. He didn't. I don't remember him saying that to me.

Q. Didn't he say that to either Mr. Selig or Mr. Ames?

A. I didn't hear him make such a remark.

Q. Didn't he, in his anger, when the vessels came together and in the excitement of the collision didn't he say that "the reason these two vessels came together is you fellows have been down to Prince Rupert and run me down? You have got liquor aboard this craft"?

A. He said—

(Testimony of Leo Frank Ryan.)

Q. (Interrupting.) Or words to that effect?

A. He said the helmsman was drunk and he told Mr. Selig that and Mr. Selig stated that he wasn't drunk.

Q. Mr. Selig, however, denied at all times and right then on the spot that there was any liquor on board his vessel? A. No.

Q. He didn't? A. He did not.

Q. You didn't see any liquor there?

A. Well, I seen a whiskey bottle aboard, one-half or two-thirds full of whiskey, in the forecastle.

Q. You knew what was in it?

A. I can smell whiskey.

Q. Don't you know that in that bottle there was acid, that it was a bottle of acid, and that there was no whiskey there?

A. Mr. Selig wouldn't have drank it, if it was acid, I'm sure.

Q. How?

A. I say, Mr. Selig wouldn't have drank it if it was acid and he wouldn't have offered me a drink.

Q. Sir?

A. And he wouldn't have offered me a drink.
[224—157]

Q. Didn't he tell you at the time, "Here. If that's whiskey, taste it and see if it is"?

A. I didn't say anything to him. He took the bottle down and asked me if I wanted a drink, and I said, "No."

(Testimony of Leo Frank Ryan.)

Q. The wheelsman, by putting his wheel over—the two vessels came together down on the port quarter, about eight feet from the stern, didn't they? A. Yes.

Redirect Examination by Mr. C. H. COSGROVE.

Q. When you testified about the boat going seven and a half knots an hour and traveling ten or twelve feet a second—

The COURT.—(Interrupting.) He didn't testify to that. Counsel asked him—

Mr. MARTIN.—(Interposing.) I asked him if that was so, if that wouldn't be the computation.

Q. Just one further question. When you signed on as master of that boat in the customs-house, were you asked what your age was?

A. I was not.

Mr. COSGROVE.—We wish to offer a copy of the pilot rules if your Honor please, and have them marked Libellant's Exhibit "A."

(Pamphlet containing pilot rules, etc., received and marked.)

Mr. COSGROVE.—I think that this is our case.
[225—158]

Testimony of A. J. Inman, for Libellant.

A. J. INMAN, called as a witness on behalf of the libellant, having previously been sworn, testified as follows:

Direct Examination by Mr. COSGROVE.

Q. Mr. Inman, the other day, when you testified

(Testimony of A. J. Inman.)

as to the estimate you made for the repair of the "Wildwood," you stated you didn't have your figures with you, but you thought you could find them. Have you found them?

A. Yes. (Looks through wallet.)

Q. What is your total bid? A. \$1328.30.

Q. I want now to ask you whether you found the keel of the boat cracked? A. I did.

Q. Did you make a further examination of the boat since the one that you mentioned in your testimony yesterday?

A. Yes, I had a good look at it again yesterday.

Q. Is the keel cracked? A. Yes.

Q. Are you sure of it? A. I know it.

Q. Let me take your statement. (Witness hands statement to counsel.) Does this statement contain the items upon which your bid of \$1,328.30 is based? A. It does.

Q. I would ask that this bid or document be marked Libellant's Exhibit No. 2. I offer it in evidence, if your Honor please. (Hands statement to opposing counsel.)

Cross-examination by Mr. MARTIN.

Q. I see you have a new keel, 8x10x40? [226—159]

A. Yes, sir.

Q. Could that keel be spliced?

A. Yes, it could.

Q. In that event you wouldn't have the item that you put down for a new keel?

(Testimony of A. J. Inman.)

A. Well, now, I figure maybe different than some people, but I figure it would cost a little money to splice that keel and make it strong. I figure it would cost more than it would to put a new one in. That's the way I figure.

Q. Do you know whether that keel was split or cracked before the collision?

A. No, I can't state that.

Q. You wouldn't be able to say as to that?

A. I wouldn't be able to say.

Q. It is barely possible that, having grounded or struck on some rock or something of that kind, it might have been there for some years?

A. It could be.

Q. Huh? A. It could be.

Q. Is there anything to indicate that it is a new break?

A. Well, you couldn't tell that unless you could open it up so you could see it.

Q. She has been on the mud now since last July, lying here on the flats?

A. I happened to see that boat before this collision; some time before. Oh, it might have been six months before—putting on a coat of copper paint on her and I noticed no crack at that time.
[227—160]

Q. But you couldn't tell when the crack was done after that so as to hold this collision responsible for it?

A. Well, judging from the shape the stern post was in, it would indicate that it was done then, be-

(Testimony of A. J. Inman.)

cause she is mortised, the stern post is mortised into it and the stern post at the present time is twisted and broken badly and that would be the occasion of the splitting of the keel.

Q. Where is the crack on the keel?

A. In the back end; up and down.

Q. Knowing the age of that hull, do you think it is worth twelve—well, your figure is \$1,328—to repair her?

A. It's worth that much to do the work.

Q. And would you spend that much money on a hull of that age?

A. I would spend four or five hundred dollars more and have a new one.

Q. And have a new boat?

A. Yes; if it was mine.

Mr. MARTIN.—That's all.

(Witness excused.) [228—161]

And thereupon the claimant, to maintain the issues on his part, introduced the following evidence, to wit:

Testimony of M. S. Dobbs, for Claimant.

M. S. DOBBS, called as a witness on behalf of the claimant, having been first duly sworn, testified as follows:

Direct Examination by Mr. MARTIN.

Q. You are the deputy collector of customs in charge, are you not? A. Yes, sir.

Q. At Ketchikan? A. Yes.

(Testimony of Carrington C. Keesling.)

Q. And as such, have, of course, the custody of the customs records and books? A. Yes, sir.

[232—165]

Testimony of Carrington C. Keesling, for Claimant.

CARRINGTON C. KEESLING, called as a witness on behalf of the claimant, having been first duly sworn, testified as follows:

Direct Examination by Mr. MARTIN.

Q. Mr. Keesling, state your full name.

A. Carrington C. Keesling.

Q. You live here in Ketchikan, Mr. Keesling?

A. Yes, sir.

Q. Lived here for some years?

A. I lived here for nearly two years.

Q. Where did you live before that?

A. Anacortes, Wash.

Q. What business are you engaged in?

A. I was engaged in the boat building business, and am still a boat builder.

Q. Still a boat builder? A. Yes.

Q. How long have you been engaged in business as a boat builder?

A. Since I was twenty-one years old.

Q. What, by the way, is your age now?

A. Fifty-six.

Q. During that time, have you maintained a plant of your own? A. Yes, sir. Not all the time.

Q. Sir? A. Part of the time.

(Testimony of Carrington C. Keesling.)

Q. Yes. Where have you worked. Where have you got your plant?

A. My plant was at Anacortes. Previous to that I was with the Pacific-American Fisheries several years.

Q. Where was that plant located? [234—167]

A. On an island near Bellingham.

Q. During that time, have you had occasion to build various styles and types of gas boats, cannery tenders and fish boats, etc.? A. I did, sir.

Q. Have you looked at the launch "Wildwood" down here on the beach? A. Yes, sir.

Q. Have you built boats of her type and design?

A. Yes, sir.

Q. And structure? A. Yes, sir; similar to her.

Q. At my request did you check the work over and examine the boat to see how much she could be repaired for?

A. I did, sir. I went over her in a casual way.

Q. Will you tell the Court, if you can, just the extent of those repairs, what you deem or found necessary to do to put her back in just as good condition as she was immediately before the collision, so far as that could be ascertained on an inspection?

A. Well, sir, I found there was several—in fact, I figured on removing most of the planking on the starboard side, up to about 14 feet long, and some of the deck, and put in a new stern post, and make an adjustment of the outer line. She's out

(Testimony of Carrington C. Keesling.)

of line a little; out of "wind" we call it—and new guard, new frames, new deck beams.

Q. How many new frames did you expect to use?

A. Well, I would have to give you, to be accurate about it, there's ten strakes, planking, 8 frames, 5 deck beams; rim or horseshoe, which is the timber that runs across the stern [235—168] and fastens the deck and planking together—

The COURT.—(Interrupting.) Just a little slower.

WITNESS.—(Continuing.) —decking, hundred feet of decking, stern posts, guards—ample guards to put her in shape—and iron bark, covering, and a few sundries, including hardware, and painting, pitching and puttying and all that.

Q. You have measured, then, the amount of feet, the amount of area, the amount of timber there, planks? A. Yes, sir; I have—858 feet.

Q. What would that cost you? A. Material?

Q. Yes.

A. About a hundred dollars a thousand. Material altogether I figure on \$145; labor, \$375.

Q. That would contemplate, now, how many men?

A. About four men, ten days.

Q. Four men, ten days.

A. Ample allowance for dockage.

Q. How much, Mr. Keesling, is your total estimate? A. \$500.

Q. \$500? A. Yes, sir.

Q. Did you— Of course, being a boat builder, of long experience, are you familiar with the struc-

(Testimony of Carrington C. Keesling.)

ture and design and style of hull construction, aren't you? A. Yes, sir.

Q. What would you say as to the method or style of construction employed in this boat?

A. Not first class. [236—169]

Q. Not first class? A. No, sir; amateur.

Q. Would that fact—would the latent defects or criticisms, if you could call it such, in her build or construction, would that have contributed, in your judgment, to the damage done by the collision?

Mr. COSGROVE.—Just a moment; what do you mean by “latent” defects?

Q. Well, I mean defects in the construction of the vessel itself.

A. Oh, she would be easier wrecked than she would otherwise, if she was put up in proper style; proper shape.

Q. Will you explain to the Court just what you mean by that; what you mean, first, if she had been put up in proper style and being put up in proper style, what the result would have been?

A. Well, if the proper style of boat, she would have been stronger, if she had deadwood in her for instance. There is no deadwood in her aft. The Sampson piece or timber which holds up the stern, lays on top of the stern post, lays on the—lays on top of the keel; and shaft log, there is no shaft log in her. The shaft, the part for the shaft is bolted through the stern post and this Sampson timber, which I have never seen before in my life, and I

(Testimony of Carrington C. Keesling.)

have seen a good many vessels, and being no dead-wood, nothing to bolt it to. [237—170]

Q. Would that style of construction, Mr. Keesling, have rendered her stronger?

A. Sure would.

Q. And more able to resist the kind of blow which she did receive?

A. Yes, sir. Her rim is very light, very light constructed rim, or horseshoe, which is commonly called rim.

Q. The "Wildwood" was struck where?

A. On the quarter, the port quarter; just about the stern post, I should judge, abreast of the stern post.

Q. Could you ascertain whether the keel was broken?

A. No, sir; I couldn't ascertain because she was more or less in the mud, and apparently the keel looked all right, although I see the necessity of a new shoe. Shoes, as a rule, are replenished in from one to two years. That's about all you can figure on a wooden shoe lasting under keels, from one to two years, and that was no fault of the accident.

Q. Is that estimate that you have given me based upon your knowledge of work and labor in Ketchikan in July, 1921? A. Yes, sir.

Q. It is? A. Yes, sir.

Q. You say \$500 would furnish everything?

A. Yes, sir; at the rate of \$7.50 a day.

Q. Are you familiar with prices, say, of second-

(Testimony of Carrington C. Keesling.)

hand fish boats of the type and age and general style of construction of the "Wildwood"?

A. Fairly familiar.

Q. What would you say the value of that boat was? A. Well, the value— [238—171]

Q. (Interrupting.) At the time of the collision; before the collision.

A. Previous to the collision?

Q. Yes, previous to the collision?

A. Well, I should judge the hull would be worth about \$300.

Q. How much? A. \$300.

Q. \$300? A. Yes.

Q. Of course, the engine, that would depend—

A. (Interrupting.) I don't know anything about the engine, because I never saw the engine; don't know the condition of her or anything about it.

Q. If the hull had been repaired immediately following the collision, do you think it would have been at all necessary to take the engine out of her?

A. Not unless the boat was submerged. If she was in the condition where she was submerged every tide, it would necessitate either taking the engine out or, if not, treating it with grease and oil, because there are parts that would rust.

Q. If you had gone to work right away to rebuild the boat, put her on the ways— By the way, did your figures contemplate the use of ways?

A. Yes, sir.

Q. Then if you would have hauled her on the

(Testimony of Carrington C. Keesling.)

ways, she wouldn't have been submerged, would she? A. No, sir.

Q. Then, in that event, there would have been no necessity of taking the engine out? A. No, sir.
[239—172]

Mr. MARTIN.—I think that's all. Oh, just one further question. Would you say that the vessel was worth repairing in her then present condition?

A. Well, according to what a man could use her for; what business he'd have for her. The boat, in my own estimation the boat is hardly worth repairing.

Q. That is based upon your knowledge of hulls of that age, that could be bought, in your judgment, say for \$300? A. Yes.

Q. It would not be worth more than \$300?

A. No.

Mr. MARTIN.—That is all.

Cross Examination by Mr. COSGROVE.

Q. Are you in the boat building business here, Mr. Keesling? A. I'm working at it; yes, sir.

Q. Where? A. For the Forestry Service.

Q. What doing? A. I'm repairing boats.

Q. How long have you been in town?

A. I have been in town since I arrived here in this town, I started to work here now over a year ago, work for the lighthouse people; lighthouse department.

Mr. MARTIN.—We'd like to offer his estimate in evidence as part of his explanation.

The COURT.—Yes.

(Testimony of Carrington C. Keesling.)

(Received and marked.)

Q. When did you examine the "Wildwood"?
[240—173]

A. Sunday morning just about nine o'clock, or a few minutes afterward.

Q. When were the arrangements made with you?

A. About eight o'clock Sunday morning.

Q. Who was it called on you? A. Mr. Selig.

Q. Have you known Mr. Selig long?

A. I have known him, known of him several years, and have met the gentleman sometime last year for the first time.

Q. I presume he told you why he wanted you to examine it?

A. No; he asked me if I could come down and look at the boat; examine the boat for them.

Q. Did he go with you?

A. Yes, he went with me because I didn't know where the boat was and didn't know there was such a boat as the "Wildwood" at the time.

Q. Did you ever see the "Wildwood" before the accident? A. No, sir.

Q. How long a time did you take in examining her?

A. I took, at that time I took about half an hour.

Q. That is the only examination you made?

A. Yes, sir.

Q. You noticed that it is drawn away from her stem? A. No, sir. [241—174]

Q. Just tell what examination you made of the boat?

(Testimony of Carrington C. Keesling.)

A. I made an examination of the damaged parts on the after end of the boat.

Q. Just to close up the hole in her?

A. Yes, sir; fix her up so that she would be seaworthy.

Q. Well, now, let's find out.

A. There was no pilot-house, no hatches taken into consideration whatsoever. I was told that the hatches had to come off since.

Q. I want to get at just what examination you made of this boat?

A. I examined the after end of the boat, the deck, planking, stern post, the after end of the keel, and the rim.

Q. Well, why didn't you examine the entire boat to see whether she had been damaged elsewhere, so that other repairs would be necessary?

A. I could see that.

Q. Was she drawn away from the stem at all.

A. I didn't examine her stem at all.

Q. Did you find out the condition of the planking in there or the other work?

A. That's taken into consideration; that would have to be made good.

Q. Then you bid covers tearing up the stem, because she is drawn away from it?

A. I don't understand you.

Q. Well, if she is drawn away from the stem, you would have to replace that part of it, too, wouldn't you? [242—175]

(Testimony of Carrington C. Keesling.)

A. If that was done in the accident, yes; if not, no.

Q. You say, if it was done in the accident?

A. Yes, sir.

Q. And if not, no.

A. The stem could be drawn away from the planking without otherwise, without being in that accident.

Q. Yes, that's very true.

A. We're not dealing with that phase of it.

Q. Do you figure that you are dealing with that phase of it, Mr. Keesling?

A. I'm dealing with the accident, as the accident shows on the boat.

Q. Oh, yes; then you didn't examine the stem at all, did you? A. No, sir.

Q. You don't know what the conditions or things prevailed in that? A. No.

Q. Did you examine the pilot-house?

A. Pilot-house?

Q. Yes. A. No, sir.

Q. Did you examine the keel?

A. I looked at the keel as I went about from stern to stern, examined the after end of the keel. I found nothing wrong with the keel.

Q. Could you tell whether the keel was cracked?
[243—176]

A. No, sir; I couldn't see, as I told you. The keel was in the mud.

Q. Well, you couldn't make much of an examination in half an hour, anyway, could you?

(Testimony of Carrington C. Keesling.)

A. It don't take me very long to examine a boat. 'Taint the first time I have examined one.

Q. What work were you going to do for \$500? Just tell the Court. A. I told you.

Q. Well, just tell us once more. You were going to repair that hull, now. Is that all?

A. Repair the hull and planking on each side, if necessary, and the frames and the deck, deck beams, and a rim, adjust the strong back where it belongs, put a new stern post in, caulk it and paint it, putty it and put it in commission.

Q. In other words, you were going to repair her stern? A. Yes, sir.

Q. Without reference to any condition that might prevail forward?

A. I went forward as far as the main hatch forward and examined her through there. There would have to be more or less work done to her hatch.

Q. Did you go forward to the pilot-house?

A. I went to the main hatch.

Q. But you didn't go on way up to the end of the boat?

A. No, sir; I didn't go up to the stem of the boat.

Q. Well, now, suppose you had to put in a new keel, how much would that add to the bid?

A. \$150. [244—177]

Q. Are you in business for yourself? A. No.

Q. You say you are not?

A. No, sir; I'm working by the day. Not in business.

(Testimony of Carrington C. Keesling.)

Q. Were you formerly in business for yourself?

A. Yes, sir.

Q. Where? A. Anacortes, Washington.

Q. And you made your bids then, I presume, along the lines that you are making your bid now?

A. I made my bids so that I could see my way right straight, fair and square. I didn't intend to rob anybody or get robbed myself.

Q. Is that the reason you are now working for wages instead of being in business for yourself?

A. I don't know that it was.

Q. Now you say her hull is worth about \$300?

A. Yes, sir; previous to the accident.

Q. At what time did you fix that value—when she was injured or new?

A. I valued her previous to the accident.

Q. Just tell me how you arrive at that price?

A. Well, I arrive at that price because second-hand hulls are pretty cheap, have been cheap for the last two or three years, since I have been in Alaska.

Q. Do you know a hull you could have bought on the 23d of July for \$300? [245—178]

A. I couldn't swear to that. I'm not in the buying business.

Q. Well, but you are putting a price on that hull when she was in the fishing business on the 23d of July, in the middle of the fishing season.

A. According to the condition of the hull and

(Testimony of Carrington C. Keesling.)

the construction of it, I wouldn't feel like giving over \$300 for the hull previous to the accident.

Q. Notwithstanding that you never saw her previous to the accident?

A. No; I didn't see her before that.

Q. Find any evidence of rot or decay, anything of that kind, in your examination?

A. No, no rot.

Q. And your criticism of the hull is what—it is too heavily built or too lightly built?

A. It is neither one nor the other.

Q. What is the chief objection, then?

A. It is an amateur built boat. It's not a well-built boat.

Q. Not built according to the rules you have followed in the game? A. Yes, sir.

Q. Do shipbuilders vary in their rules of building, or all follow the same rule.

A. They vary a good deal.

Q. Huh? A. Lots of variation.

Q. The builders don't agree?

A. They vary, but then it's the money that counts.

Q. What? [246—179]

A. It's the money that counts. If you want a good hull, you pay for it.

Q. Would you call this a good hull?

A. No, sir.

Q. In what respect does it fail to be good?

A. Because it is not properly constructed in a good many ways and it's a cheap hull.

(Testimony of Carrington C. Keesling.)

Q. Did you notice any natural crooks in her?

A. Natural crooks?

Q. Yes. A. Yes.

Q. Is that evidence of a poorly built or well-built boat?

A. That can be considered— I consider bent frames all right and I consider natural frames all right at times. I consider and the majority of boat builders consider, that bent oak frames are far superior to natural crook frames in a small boat.

Q. Now, this boat was strongly built, wasn't she?

A. I didn't consider her very strong, not according to my theory of building boats.

Q. Would you say that she is weak or strong?

A. She is very weak aft. I don't know what she's got in her forward. I didn't examine her there, but I know that aft she is very weak.

Q. What indication of weakness did you find?

A. The absence of deadwood and proper construction.

Q. Can you tell from her appearance now whether she had any deadwood in her before she was hit? A. I certainly can. [247—180]

Q. On or about the 23d of July do you know whether there were any fish boats for sale here, or hulls that could be used for fishing boats?

A. I couldn't say for sure, because on the 23d of July I was in the Government service, with the lighthouse people. I was very busy and I wasn't looking for hulls. I made no inquiries.

(Testimony of Carrington C. Keesling.)

Q. Yes, well, now, on the 23d of July—

A. (Interrupting.) In fact, I beg your pardon, I do know of two or three hulls that were for sale then.

Q. On the 23d of July, in the midst of a very successful fishing season, with the “Wildwood” in commission and actively engaged in the fish business, with no other boats available, would you say the price of her hull was not more than \$300?

A. Yes, sir; that is what I consider her worth—not over \$300. There were other boats available, too, at the time. I know of several boats. I know of one boat right close to the lighthouse dock. It was laying there, a boat about 45 feet long, that could be bought very cheap, laid on an old gridiron between the lighthouse and the old dock; could be bought very reasonable.

Q. Was that a well-known fact, or something within your knowledge particularly.

A. Well, it ought to be pretty well known. The boys of the lighthouse knew of it, and the man who worked at the old dock I know was trying to sell it.

Q. Did you know of the boat being advertised for sale?

A. No, sir; I don't know of its being advertised for sale. [248—181]

Q. What is the name of the boat?

A. I couldn't tell you the name of it. There is no name on it.

Q. Suitable for the fish business, was it?

(Testimony of Carrington C. Keesling.)

A. Yes, sir.

Q. What could it have been bought for?

A. I don't know that; I didn't ask him.

Q. So that you can't give us any more definite reason for putting a value of \$300 on the hull of the "Wildwood" under those conditions at that time?

A. Just my convictions on the prices of boats at that time. For the last two years boats have been very cheap. Everybody knows that—almost giving boats away here.

Q. Was that last year?

A. The last two years, almost giving boats away—almost pay you to take boats away to get rid of them. I've got one now that I've got \$2,000 tied up in. It's got a good engine, good accommodations, full equipment, and I'll take a thousand dollars.

Q. You didn't get one of those boats that they were trying to give away?

A. I didn't get it, because I had this boat.

Q. And you didn't want another boat?

A. No, sir.

Q. At the same price? A. No.

Mr. COSGROVE.—I think that's all.

Redirect Examination by Mr. MARTIN.

Q. Was there any evidence of any injury forward around the stem or forward part of the vessel? [249—182]

A. I didn't see any evidence of injury forward.

Q. If there had been any injury forward, you could have seen it from the inspection you made?

(Testimony of Carrington C. Keesling.)

A. I was forward there, but I didn't make a close examination of the stem, because I wasn't interested in the stem. I was trying to get at the actual damage at the stern, about from amidships aft.

Q. In your judgment how did the colliding ship enter the hull?

A. That is, enter the "Wildwood's" hull?

Q. Yes; that is, ranging forward or from forward to aft, straight ahead, or how?

A. I should judge, apparently, according to the way she appears that she hit her from forward. The two boats were approaching each other and the boat that caused the collision or struck the "Wildwood," hit with the stem leading aft.

Q. At about what angle did they come together, would you say? A. I should judge—

Q. (Interrupting.) That is square across?

A. Oh, no; about ninety degrees, I should judge.

Q. Ninety degrees. You mean ninety degrees from the line of her keel, of the "Wildwood's" keel?

A. Yes. That would be right square across, taken right square across. I don't know what effect it really had, but it was apparent as though she came in kind of quartering, not straight on, because of—

Q. (Interrupting.) Well, draw, for his Honor, just the angle that you think—

The COURT.—Oh, I understand. Not necessary to put in a diagram. [250—183]

A. Quartering is not straight on. It can be ninety degrees, less or more ten degrees.

(Testimony of Carrington C. Keesling.)

Recross-examination by Mr. COSGROVE.

Q. You say you didn't find any injury to the pilot-house?

A. No, I didn't examine the pilot-house because the hatch was off and the main hatch was off, off this deck, and they said that it was taken off after the accident.

Q. And you didn't examine the stem?

A. No, sir.

Q. And you didn't examine the keel?

A. I just saw the keel, as far as I could examine it. She was in the mud and there was nobody else that could go down there and examine the keel any better than I could, because she is submerged.

Q. And you just went down there to examine what it would cost to repair the damage done by the collision? A. Yes, sir.

Q. And they told you what that damage was?

A. They give me an idea of what the damage was. I could see it. I didn't have to be told.

Q. Mr. Selig told you, didn't he?

A. Mr. Selig told me to examine this boat and see what I could repair the damage for.

Q. The damage caused by the collision?

A. Yes, sir.

Q. That is what he told you? A. Yes, sir.

Q. And he told you what damage was caused by the collision, didn't he? [251—184]

A. He didn't tell me. I could see it.

Q. And that is why your examination was limited,

(Testimony of Carrington C. Keesling.)

Mr. Keesling, it was limited on account of his instructions?

A. Oh, no; not necessarily at all.

Q. You didn't make a thorough examination?

A. I went as far as there was any damage that was done.

Q. Do you mean to tell me that you can tell the damage done to the boat without examining the entire boat?

A. Sometimes; yes, you can; most assuredly.

Redirect Examination by Mr. MARTIN.

Q. This job would, in your judgment, have placed the "Wildwood" back in just as good condition as she was before the collision?

A. Yes, sir. I wouldn't put new pilot-house on her or new hatch covers, but the hull, as she is to-day, it would put her in shape to-day for that amount.

Q. When you leave the courtroom now and are excused, will you go down and examine the keel?

A. Yes, sir. [252—185]

Testimony of M. S. Dobbs, for Claimant (Recalled).

M. S. DOBBS, recalled as a witness on behalf of the claimant, having been previously sworn, testified as follows:

Direct Examination by Mr. MARTIN.

Q. Tell us if you have not a statement there by Mr. Ryan and just what the record says concern-

(Testimony of M. S. Dobbs.)

ing his certificate as a master on the 14th day of February.

A. It reads as follows: I, L. F. Ryan, master of the vessel called the "Wildwood," 14 net tons. I swear that I am a citizen of the United States, having been born within the limits thereof, and that such vessel shall not, while my license continues in force, be employed in any manner whereby the revenues of the United States may be defrauded." Signed "L. F. Ryan, Master. Sworn to before me, this 14th day of February, 1921, George W. Woodruff, Deputy Collector."

Q. Have you a ruling on that in your department as to the requirement of citizenship, as to age?

A. They require a man to be 21 years of age. That's one thing. He must be a citizen of the United States, either born within the limits thereof or a naturalized citizen. [253—186]

A. Well, I know, but it is not in that. He swears that he is a citizen of the United States. [254—187]

Recross-examination by Mr. COSGROVE.

Q. Then this statement of Mr. Ryan, referred to, in your office, Mr. Dobbs, is to the effect that he is a citizen of the United States?

A. That he is a citizen of the United States.

Q. But it doesn't say whether he is an adult citizen or simply an infant citizen, minor citizen?

A. No, sir.

(Testimony of M. S. Dobbs.)

Q. And, of course, you don't know whether he was asked whether he was over twenty-one years old? A. I did not take that.

Redirect Examination by Mr. MARTIN.

Q. But, in the operation of your office, you require him to be an adult person, twenty-one years of age? A. Yes, sir. [255—188]

Q. Did you find that Mr. Ryan had any license when he appeared in command of the "Wildwood" on July 23d?

A. He wouldn't require a license to operate the "Wildwood," so he was not asked for one.

Q. Well, wouldn't he have go and take his master's certificate, that you spoke of?

A. He would not. He would simply be endorsed as master of the vessel, but he would not be required to have a license as a master of a fishing vessel.

Q. Oh, no; but when he was master in February and his name was endorsed on the vessel's papers, that continued until there was a change of masters sometime in March or April, and there were several changes, weren't there?

A. The fact that he was endorsed as master?

Q. Yes.

A. That would continue until someone else took his place.

Q. Was his name endorsed when he went as master the second time? A. Yes, it was.

Q. Do you find where the oath was administered to him?

(Testimony of M. S. Dobbs.)

A. I told you, if I remember rightly—and I believe I do—that where a man has taken the oath of citizenship once and where that is made a matter of record in your office, we don't require it the second time.

(Witness excused.) [256—189]

Testimony of Joseph F. Radenbaugh, for Claimant.

JOSEPH F. RADENBAUGH, called as a witness on behalf of the claimant, having been first duly sworn, testified as follows:

Direct Examination by Mr. MARTIN.

Q. Mr. Radenbaugh will you state your full name? A. Joseph F. Radenbaugh.

Q. You live here in Ketchikan?

A. I live across the channel from here.

Q. Across the channel? A. Yes, sir.

Q. How long have you lived here?

A. I have lived here since 1906.

Q. What business are you in?

A. Boat building business; boat building and repairing.

Q. How long have you been in the boat building and repairing business? A. Since 1895.

Q. And in what places, Mr. Radenbaugh?

A. Before I had a yard of my own, I worked in Ballard and Seattle for Morans, and I worked in Anacortes for several years, and I come up here in 1906, and I didn't go into the business here until about 1908. There wasn't anything in that line around here those years when I first came up here,

(Testimony of Joseph F. Radenbaugh.)

and I went into the business later and have been building scows, boats and drivers, and repairing boats.

Q. You have followed that business, then substantially all the time? A. Yes, sir.

Q. Since 1895?

A. Yes, sir; except about two years of my time.
[257—190]

Q. Are you familiar with the cost of labor and material in July, 1921? A. Yes, sir.

Q. Here in Ketchikan? A. Yes, sir.

Q. Did you at my request look over the boat "Wildwood"? A. Yes, sir.

Q. Down on the flats here? A. Yes, sir.

Q. Did you make an estimate of what it would take to repair the boat? A. Yes, sir.

Q. Well, what would it cost? A. Yes, sir.

Q. Can you tell his Honor, very briefly, just the amount of work which you estimated would be necessary to restore the hull, put the hull back in as good condition as she was before the injury?

A. What the price would be, what I would want to do the job?

Q. Well, before you come to your price, can you tell the Court just the amount of work?

The COURT.—What is necessary.

Q. What it would be necessary to do.

A. That there is an old boat, and you can't just really give all that down close like that there, because with an old boat you can't figure that way until you tear into her.

(Testimony of Joseph F. Radenbaugh.)

Q. What did you figure on?

A. I figured that I could do the work for \$700.

Q. And you would do the work within what period of time? [258—191]

A. Well, that would be according to how quickly they wanted it. If they wanted to have her in a hurry, I would put on several men and could get it out in eight or ten days, but if there wasn't any such hurry, I would do it mostly myself.

Q. How many men would you have taken to do that job in eight or ten days?

A. Three men besides myself.

Q. Three men and yourself? A. Yes, sir.

Q. Now, for that price of \$700, what did you estimate you were going to do, that is, how much decking, planking, new ribs, etc.

A. I would have to look that up (Takes piece of paper from pocket). I have twelve planking on the port side, and three on the starboard side, seven timbers, six deck beams, guards, 28 feet of bulwarking, 8x12 decking; fix the house, straightening up the pilot-house, putting that in shape and the stern post, and put in a new timber over the stern post there, overhauling and fixing it in sea-going shape.

Q. Would that, in your judgment, restore the vessel to about as good a condition as she was in before the injury?

A. It would last longer than the rest of the boat by a long ways.

Q. It would? A. Yes, sir.

Q. Have you, at my request looked over Mr. Kees-

(Testimony of Joseph F. Radenbaugh.)

ling's figures? A. No, I haven't seen his figures.

Q. Where did the collision occur on the hull? Where did they come together? [259—192]

A. On the port side, aft.

Q. Could you tell from the appearance of the timbers and the way the blow was given or directed to the hull, how it ranged, whether the oncoming and colliding vessel ranged from forward aft, or aft forward, or straight on? A. The vessel that hit her?

Q. Yes. The "Eagle" in this instance.

A. I don't just understand what you mean by that there part of it.

Q. Would the hull inside and the place where the timbers were crashed indicate it?

A. I could make you a diagram of it, give it to you that way.

Q. Well, will you do that?

A. From the way it looks to me (witness sketches diagram); about as near as I can figure it, it looks to me like she was hit—

Q. Which would be the "Eagle" and which would be the "Wildwood"?

A. This would be the "Eagle" and this (indicating) would be the "Wildwood."

Q. Well, put your name on the slip of paper so that you, so that it can be identified as your statement.

(Witness does so.)

Q. What would you say as to the construction of the "Wildwood," whether she was well built or poorly built?

(Testimony of Joseph F. Radenbaugh.)

A. Well, the "Wildwood" wasn't built by ship carpenters, I can see that. The "Wildwood" is a pretty strong built boat from where she got this blow forward, but from there aft, right where she got hit, she was weak. That was her weak spot. All boats have weak spots in them some place, and that was her weak spot. [260—193]

Q. Did she suffer more from the collision and the blow she received than she would otherwise, if she had been well built and strong, a strong vessel?

Q. If she had been strong in there, she wouldn't have torn loose anything like that there. It would just cut right into her.

Q. Are you familiar with the value of boats of the type of the "Wildwood" and were you familiar with the price in July, 1921?

A. Well, no; not very much. There are several boats around here for sale. You know how it is in this part of the country here. You can buy and sell lots of them a good deal cheaper one day than another. Just depends on how badly a man wants to sell a boat.

Q. Would you say that the "Wildwood" was worth repairing? A. No, sir.

Q. In your judgment? A. Not now.

Q. Why? A. Her age is the cause of that.

Q. Beg pardon? A. Her age.

Q. Her age?

A. Yes; if she had been a new boat, there wouldn't have been anything to it.

Q. She was built in 1906?

(Testimony of Joseph F. Radenbaugh.)

A. She was built in 1906. She was running around here in 1906, 1907, when I come up here.

Q. She lay under water, didn't she, for quite a period of time? A. Yes.

Q. Three or four years ago? [261—194]

A. Yes, sir. I don't know how long she was sunk, but I seen her under water.

Q. Can you make me an estimate of the value of the "Wildwood's" hull as you remember the hull in the summer of 1921, July 1921?

A. Well, you're asking me a question pretty hard to answer that way. They all value their hulls a great deal more than they can get for them. If I was going to buy a hull, I wouldn't buy nothing like that, at that age.

Q. I'll ask you if your best judgment is based upon your knowledge of boat values and the boat market, as far as you know about it?

A. Well, I'd lots rather sell the boat for \$600 or \$700 than to pay that for her.

Q. Your figure is \$700 to repair her in eight or ten days? A. Yes, sir.

Q. That is, three men and yourself?

A. Yes, sir.

Q. And you wouldn't feel that she was worth the cost of repairs? A. No, sir.

Q. Did you examine her keel to ascertain whether her keel was broken?

A. How is that?

Q. Did you find out whether her keel was broken?

A. I didn't find her keel broken.

(Testimony of Joseph F. Radenbaugh.)

Q. You didn't see that?

A. I didn't see no place where it was broken. There's a split [262—195] in the after-end, but that is natural for any of these old boats. When they put tension on those stern posts, they will split the keel.

Mr. MARTIN.—That's all.

Cross-examination by Mr. COSGROVE.

Q. Mr. Radenbaugh, could you tell from the examination you made of that boat whether she had been hit hard or simply approached gently?

A. Well, gently don't break into a boat.

Q. Would you say that, from your examination of the damage done her, that she was hit by a big boat traveling at full speed, or some lesser speed?

Mr. MARTIN.—That question, your Honor, is a little too indefinite.

A. It's pretty hard—

The COURT.—He can answer.

A. It looks to me like, if she had been hit full speed it would have cut her whole after end off.

Q. You don't think she was hit by a boat traveling at full speed, then?

A. I don't know about that. I don't know how slow they were traveling or how fast.

Q. Couldn't tell from the extent of the damage?

A. No; if it was one of those fast speed boats that travels along twenty miles an hour, that would have went on through her.

Q. Let me make the question a little more defi-

(Testimony of Joseph F. Radenbaugh.)

nite. You are familiar with the gas boat "Eagle"?
[263—196] A. I am.

Q. And you are also familiar with the damage done to the "Wildwood"? A. Yes, sir.

Q. By colliding with the "Eagle"?

A. Yes, sir.

Q. Would you say that the "Eagle" was traveling at full speed when she hit her?

A. No, I wouldn't say that. I am not sure of that, Charlie, because I couldn't hardly answer that question, because there is the guard to contend with and the deck, and it might have been—

The COURT.—Slanting blow, wasn't it?

A. Yes, sir; slanting blow. The way the damage shows there, it was a slanting blow. If it had been straight on like that there, there would be no "Wildwood" here.

Q. When did you examine the hull?

A. It was the day before yesterday. I was two days down there, two tides.

Q. Did you examine it thoroughly?

A. Yes, I think I went over her thoroughly. I went over her thoroughly enough to figure out what it would cost to put her in shape.

Q. Did you notice where she had pulled away from the stem? A. I didn't see that at all.

Q. Well, you examined her?

A. I never saw where she pulled away from the stem.

Q. Notice where she was twisted at all?

A. Twisted?

(Testimony of Joseph F. Radenbaugh.)

A. Yes. [264—197]

A. *Yes.* That was caused from laying on the beach, and also the blow, some of it.

Q. And you figure that you could fix her up so that she could go to sea, for \$700?

A. Well, I would fix her up for that money so that the man who owns her would be satisfied; yes, sir.

Q. Could you make her a safe vessel to go to sea for \$700? A. She is pretty aged.

Q. I say, could you make her safe to go to sea?

A. I'll make her as safe as she was.

Q. And you say you didn't find any evidence of her pulling away or straining forward of the hatch? A. Oh, there were strains.

Q. From the stem?

A. No, no; I didn't see anything there.

Q. How much time did you spend on her in your examination?

A. I was down there about three hours the first time and the second time—or the first time about two hours and the second time about three hours, crawling around on all-fours.

Q. You say you gave her a thorough examination; that is a pretty good examination?

A. Yes.

Q. And you didn't notice her being pulled away from the stem at all?

A. If she is pulled away from the stem, I couldn't find it. I didn't see that.

Mr. COSGROVE.—I think that is all.

(Testimony of Joseph F. Radenbaugh.)

Mr. MARTIN.—I think that is all, sir.

Q. Just one more question. Have you got the details upon which your bid of \$700 is based?
[265—198] A. Yes.

Q. You have.

A. Yes. That isn't all the stuff that's required in there, because you don't know what you need to fix her up—

The COURT.—Now, that isn't loud enough to get into the record. State what you told counsel.

A. I said that that isn't all that is required on an old boat like that. If it was a new boat or anything like it, I could tell. Taking down an old boat, I don't figure out what I want until I get down into her to know where I am at.

Q. You mean that there might be a lot of extras?

A. Oh, yes; you've got to take care of the things that you might need.

Q. Then this is not a complete bid?

A. That bid is a complete job; yes.

Q. You mean to say, then, that there might be a lot of extras?

A. You can't tell what kind of pieces you will need until you tear her down.

Q. Then that would constitute extra work for which you would charge extra?

A. No, no; that's in there. I have made allowance for all that.

Q. Well, then, as counsel doesn't seem to desire to present this as an exhibit, I would like to

(Testimony of Joseph F. Radenbaugh.)

introduce it in evidence as part of the cross-examination.

The COURT.—It may be received and marked. Also the diagram which Mr. Radenbaugh drew should be introduced in evidence.

Mr. MARTIN.—I will offer the diagram in evidence, if your Honor please. [266—199]

Redirect Examination by Mr. MARTIN.

Q. Mr. Radenbaugh, you made allowance in the \$700 estimate to put the boat back, to restore her, as near as you could estimate, and that estimate makes every allowance for all extras, etc.

A. Yes.

Q. That makes allowance for little odds and ends that you couldn't tell anything about until you got into her?

A. That's it, exactly.

Q. But you think that your figure of \$700 is ample in that respect? A. Yes, sir.

Q. Within your experience as a repairman?

A. Yes, sir.

Q. In fact— Do you do what might be termed heavy work; that is heavy repair work?

A. Yes, sir.

Q. Repairing scows? A. Yes, sir.

Q. And heavy craft of all kinds? A. Yes, sir.

Q. So that, in making repairs on an old vessel, you commonly run into a lot of things—

A. (Interposing.) that you don't expect.

Q. Don't expect? A. Yes, sir.

Q. And your estimate covers all that?

(Testimony of Joseph F. Radenbaugh.)

A. Yes, sir.

Recross-examination by Mr. COSGROVE.

Q. Just about how much of that bill have you allowed for [267—200] running into these things, do you know, or not?

A. Oh, I figured a hundred dollars would be plenty.

Q. Then your real bid is \$600?

A. No, no; that there covers everything. I always figure on something for myself.

Q. But you say that \$100 would take care of the unknown obstacles, and so if there wasn't any unknown obstacles, your bid would be \$600?

A. No, I'm figuring \$100 for profits.

Q. Oh, you're figuring on \$100 for profits?

A. Yes.

Redirect Examination by Mr. MARTIN.

Q. What are you allowing for the cost of your men? A. Dollar and a quarter.

Q. Dollar and a quarter an hour?

A. Yes, sir.

Q. That would be based on eight days' work for three men? A. Yes. And myself.

Q. And yourself? A. Yes, sir.

Recross-examination by Mr. COSGROVE.

Q. Would you, at your leisure, give me an itemized statement of the items that go to make up the \$700?

A. An itemized statement as to an old boat, I

(Testimony of Joseph F. Radenbaugh.)

told you that you couldn't very well figure that way.

Q. But your direct conclusion as to the \$700, I would like to have the items that make that up.

A. Yes; I can make an itemized statement of it.

Q. You must have it itemized in order to make it \$700. [268—201]

A. Certainly, when I was figuring it up I had all that.

Q. Give us the figures for each.

A. For each piece?

A. Yes.

A. Then, if you strike a lot of extras, you are up against it.

Q. Well, but then, you have made allowance for that, haven't you? A. Yes.

Q. Give us the allowances? A. All right

Q. The items and so forth, so that it can be—

A. (Interrupting.) Give me a piece of paper.

Q. Oh, at your leisure. Take the afternoon to do it, if you like. A. All right. [269—202]

Testimony of James Rasmussen, for Claimant.

JAMES RASMUSSEN, called as a witness on behalf of the claimant, having been first duly sworn, testified as follows:

Direct Examination by Mr. MARTIN.

Q. Mr. Rasmussen you live here in Ketchikan?

A. I do.

Q. Engaged in business here at Ketchikan, aren't you? A. Yes, sir.

(Testimony of James Rasmussen.)

Q. What is your business?

A. Well, gas engineer and working at odd times at boat repairing, too.

Q. Whom are you associated with?

A. Holman and I have been working together.

Q. Carl Holman? A. Yes, sir.

Q. What has been your experience in doing repair work?

A. Well, we have worked on, for the last year, any repair work that happens to come along.

Q. You have been working with him?

A. Yes, sir.

Q. Did you examine the "Wildwood" for me?

A. I did.

Q. And did you make an estimate of what you would have to do to restore the boat to as good a condition as she was immediately prior to the collision?

A. Yes, from what damage we could see, the way she was laying there, I estimated all the work that needed to be done on her.

Q. What were some of those items?

A. There was planking, there was decking, stern post, guards, [270—203] iron bark, nails and bolts, paint.

Q. What is your estimate of that work?

A. Close to \$650.

Q. \$650? A. Yes.

Q. Now, is that price, Mr. Rasmussen, based on your knowledge of the labor market, the lumber

(Testimony of James Rasmussen.)

market, material market, and the things you would need to put into the boat, in July, 1921.

A. Well, according to the lumber market, I got prices of lumber to-day, what it is at the present time.

Q. What did you allow for your lumber?

A. Ten cents a foot.

Q. That would be all clear, first-class fir lumber?

A. First-class boat lumber.

Q. Wouldn't you be able, in quantities, to get it for lots less than that?

A. According to a lumber dealer in town, he said he could land it here for that, maybe less.

Q. How long would that job take?

A. Well, we figure from a month and under.

Q. How many men?

A. Two of us—my partner and I.

Q. Your partner and you? A. Yes, sir.

Q. Can you come any nearer to that by telling us how much under if at all?

A. Well, you couldn't until you started to tear her apart, to see actually what had to be done for her. [271—204]

Q. Of course, if you used four men instead of two, you would get it done so much earlier?

A. We could get it done in less than that.

Q. So if you figure on two men on the job for one month, four men would perhaps do it in fifteen days? A. Somewheres around that.

The COURT.—Don't lead your witness there.

(Testimony of James Rasmussen.)

You're arguing with the witness and leading him, both.

Q. Would you be able to give us an estimate of the value of the hull the "Wildwood's" hull last July, before the collision?

A. Well, according to the age of the boat and the style of the boat, I think that a thousand dollars would cover the hull. I don't think you could sell it for any more than that.

Q. You mean now with the hull and engine, the whole business.

A. No; that is, \$1500 would cover the whole business complete.

Q. Is that so? Wouldn't she be worth—would the "Wildwood" be worth repairing, in your judgment, as you saw that boat?

A. Well, according to the way boats are now, you could repair the boat, but she'd be a boat and that's about all.

Q. You are familiar, of course, with boat construction, aren't you? A. Yes, sir.

Q. Is there anything in the "Wildwood's" construction that would have rendered the collision more serious than it would otherwise have been?

A. In my estimation, the stern was put in her in an awful flimsy shape.

Q. If the stern had been a well built stern, with all the proper construction, deadwood and all the work that a skilful boat builder would have put into the stern, would [272—205] the collision have been as serious, in your judgment?

(Testimony of James Rasmussen.)

A. Well, it probably wouldn't; probably wouldn't have done so much damage.

Q. The "Wildwood" was run into by a vessel approaching from the stern, ranging forward, or approaching from the "Wildwood's" bow, ranging aft?

A. You mean, would it make as much damage?

Q. No; I say from the appearance, now, of the timber, the planking and the injury itself, can you tell which way, which direction the colliding vessel came from?

A. Well, it looks to me like she was coming towards it; hit first and glanced aft?

Cross-examination by Mr. COSGROVE.

Q. You say you have been in the boat-building business how long?

A. Well, I have worked for Brown two winters and then Carl Holman and I got this shop last winter and ran it on our own hook.

Q. Did you make the examination alone, or was your partner with you?

A. I was alone when I made the examination and he went down afterward.

Q. Did you make a thorough examination?

A. As far as I could see, I made a thorough examination.

Q. Did you examine her stem?

A. No; I didn't examine the stem. I walked around the stem, but I couldn't see any damage.

Q. Did you examine the pilot-house?

A. Yes, sir. [273—206]

(Testimony of James Rasmussen.)

Q. Did you examine the keel?

A. No; there was water in the boat and she kind of rested in the mud.

Q. If she needed a new keel, did your figures take that in? A. No, it didn't take that in?

Q. Then as I understand you, your partner and you will take this job for \$650. A. Yes.

Q. Furnish the labor and material?

A. Furnish the labor and material.

Q. And you and your partner will work a whole month and furnish all the materials for \$650?

A. Yes; that's it; from what damage we could see.

Q. Would you take a bid to put her in first-class condition for that?

A. Yes, I believe I would—that is, if the keel—

Q. (Interrupting.) We don't want any if's about it.

A. Well, I couldn't examine the keel.

Q. Are you ready to take a bid to put that boat in first-class condition for \$650.

A. Yes, I believe I would.

Q. You are going to guess on the condition of the keel, are you?

A. The keel isn't going to cost a fortune to put in.

Q. How much would that cost extra?

A. I don't believe it would cost you over \$75 at the most.

Q. You want that added to the bill of \$650?

(Testimony of James Rasmussen.)

A. We're allowing for the bill of materials and our time.

Q. Are you allowing for any unknown troubles that you might run into?

A. We put in for enough material to cover the little extras. [274—207]

Q. And labor, too? A. Yes, sir.

Q. How much are you allowing?

A. Well, we allowed, I believe it was \$150 or \$200 for the extra material.

Q. Now, suppose that upon further examination, you found the stem, deck pulled away from her stem?

A. I was forward and I couldn't notice that.

Q. You didn't examine it very carefully?

A. I was up in the fore-castle-head and I couldn't notice where anything was gone.

Q. Did you examine it carefully enough to be able to bid upon what you did see?

A. I believe I did.

Q. But you say you wouldn't repair her at all if she was yours?

A. Well, it is a type of boat that it looks like almost throwing money away on.

Q. And you say her stern is rather flimsily built?

A. It is.

Q. In what respect?

A. Well, there is no deadwood in her; she is bolted together in the stern there, and the ribs—two by fours, hacked out, and the way she is

(Testimony of James Rasmussen.)

fastened together; there is no proper fastening in her or clamps in her that I could notice.

Q. Do you think she was hit pretty hard or just gently?

A. Well, it looks like she was hit fairly hard; nothing extra.

Q. Could you give us your judgment as to how fast the "Eagle" was going when she hit her?

A. I don't think I could. [275—208]

Q. In fact, her stern is almost carried away?

A. Well, I believe part of the damage to that is done by laying on the beach.

Q. Oh, you are talking about the cause of the damage. I'm speaking now of the actual damage.

A. Well, she tore loose from the stern post.

Q. You don't know whether that was done by the collision or by her lying on the beach?

A. No, I don't.

Q. As a matter of fact her entire stern must be rebuilt, must it not?

A. Well, no; I don't think so.

Q. Would her pilot-house have to be replaced?

A. Possibly.

Q. Did you see any twist in her?

A. She is twisted now.

Q. Well, don't you consider that a pretty serious trouble in a boat when you come to repair it?

A. No; I don't think so.

Q. You could strengthen her up?

A. I could strengthen her up.

Q. And you are figuring on two men a month?

(Testimony of James Rasmussen.)

A. Two men a month.

Q. As she lies there now, her hull is worth about a thousand dollars?

A. No; I wouldn't estimate her hull was worth a thousand dollars now; not as she lies there.

Q. You put your figures at a thousand dollars?

A. I said the hull was probably worth a thousand dollars last summer, in July, I believe. [276—209]

Q. And then that will allow \$500 for the engine?

A. \$500 for the engine.

Q. Because you placed the total value at \$1,500 on the boat and the engine? A. Yes, sir.

Q. Are you familiar with the engine? A. No.

Q. You know the size of her?

A. I believe it's sixteen horsepower; I'm not sure.

Q. Suppose the engine is a 24-27 Standard?

A. Well, it depends on what condition it's in.

Q. In any event, it would be worth a whole lot more than \$500, an engine of that size?

A. No, I couldn't say it would be.

Q. But when you figured on the value of that boat just prior to the collision, you figured that a thousand dollars would be the value of the hull and \$500 for the engine?

A. Well, you can split it up any way you want to, but \$1,500 I believe is a fair market price for that boat at the time of the collision.

Q. That wouldn't take in tanks or any other equipment?

A. I am not figuring on tanks and the equip-

(Testimony of James Rasmussen.)

ment. I'm just saying that that would be a fair price for the boat as she stood in July.

Q. You mean unequipped?

A. I mean the way she was. She had her tanks, but there was no gear on them.

Q. But it would take in the engine?

A. It would take in the engine; the way the boat stood. [277—210]

Q. Notwithstanding the fact that you don't know what the engine was?

A. I hear it is a second-hand engine.

Mr. COSGROVE.—That's all.

Q. Oh, did you notice that on the starboard side the deck was broken all the way across?

A. Yes, sir.

Q. You have taken that into consideration?

A. I have taken that into consideration.

Redirect Examination by Mr. MARTIN.

Q. You made the estimate, I believe, to me, based upon clear fir, didn't you?

A. Clear fir; yes, sir.

Q. As a matter of fact, isn't a large portion of a vessel of spruce, or of this particular vessel?

A. The deck beams and some of the inside lumber looks like spruce to me. It's rough material. There is no finished lumber.

Q. Do you recall saying to me anything about spruce planking? A. No; I don't.

Q. Spruce material in her?

A. No; it is fir planking.

Q. Fir planking? A. Yes.

(Testimony of Alexander Brindle.)

Q. How about the guards and rails?

A. Well, the bulwarks they may be spruce.
[278—211]

**Testimony of Alexander Brindle, for Claimant
(Recalled).**

ALEXANDER BRINDLE, recalled as a witness on behalf of the claimant, having been first duly sworn, testified as follows:

Direct Examination by Mr. MARTIN.

Q. Your boat, when she was brought in, lay in the creek? A. Yes, sir .

Q. Didn't she? A. Yes, sir.

Q. Where is that?

A. It's right about a hundred and fifty yards, two hundred yards from where she is now.

Q. When she lay there, part of her was out over the land, wasn't she, at low tide?

A. She was practically above at low tide, practically bare.

Q. Practically bare?

A. Outside of the creek running.

Q. Do you remember in raising her up, how you did that, what the operation was?

A. Patched up the hull and floated her.

Q. How did you do that?

A. I patched the hull up as you see it and floated her.

Q. And you put a big chain around her?

A. Didn't put anything around her. We passed

(Testimony of Alexander Brindle.)

a line around her, but we didn't use it and took it off again.

Q. Didn't you have a large gas boat alongside to make this big chain fast, to raise it up?

A. No, sir.

Q. By such a mechanism or some such affair?

A. No, sir; we hooked on to the towing bits and towed her across, because she was floating—not floating; she was partially submerged. [279—212]

Q. You took a strain on her to raise her up first?

A. No, she was floating, you see.

Q. Huh?

A. She was floating then some. The fish was all out of her.

Q. Full of water, wasn't she?

A. Certainly she was full of water.

Q. Don't you think that raising that boat by wrapping a chain around her amidships, an old vessel of that sort, that that would have some effect on breaking the keel?

A. There was no chain wrapped around her amidships. She was never towed with anything wrapped around her, because the line we had around her we took to tow with. In the first place we put a rope around her.

Q. Wasn't raised up by you to make her fast alongside of the gas boat?

A. She wasn't towed alongside of the gas boat. She was towed astern.

Q. She was raised up first by the gas boat?

(Testimony of Alexander Brindle.)

A. She was towed, as I said.

Q. How much did you pay for the engine, if you recall what your figure is again?

A. You mean to say what I paid for the engine or what the engine cost you?

Q. What you paid for the engine?

A. I paid \$1,200 for the engine.

Q. When did you buy the engine, how long ago?

A. I think it was three years ago.

Q. And from whom?

A. From a man named Barron Atkinson.
[280—213]

Q. That was three years ago? A. Yes, sir.

Q. You paid how much for the hull?

A. I paid \$350 for the hull under water.

Cross-examination by Mr. COSGROVE.

Q. It cost you how much to float her?

A. It cost me nearly \$1,300 to put her in the water.

Q. So the hull cost you \$1,600?

A. No; I'm counting that. It cost in the neighborhood of \$1,300 to fix her up and float her.
[281—214]

Testimony of Al. Ames, for Claimant.

AL. AMES, called as a witness on behalf of the claimant, having been first duly sworn, testified as follows:

Direct Examination by Mr. MARTIN.

Q. Your name is Mr. Ames? A. Yes, sir.

(Testimony of Al. Ames.)

Q. Al Ames? A. Yes, sir.

Q. You have lived here in Ketchikan for some length of time, have you? A. Yes, sir.

Q. How long? A. I come here in 1913.

Q. Were you employed on the gas boat "Eagle" at the time she was in collision with the "Wildwood"? A. I was.

Q. What were you doing aboard of her?

A. I was deckhand.

Q. Mr. Steve Selig was the owner and master?

A. Yes, sir.

Q. What has been your experience as a boat man, gas boat man, before the night of the collision?

A. Oh, I worked on a few different boats.

Q. How long, approximately?

A. Oh, I guess probably three or four years, all put together.

Q. And you are familiar with the operating of gas boats generally? A. Yes, sir.

Q. Now, upon the night in question, do you remember when you left Prince Rupert, the time of day? [282—215]

A. Why, I think it was somewhere around three o'clock.

Q. And you came back light, didn't you?

A. Yes, sir.

Q. There was on board whom?

A. Mr. Selig, myself and a man by the name of Olander, I think it is, Olander, I believe.

Q. Olander? A. Yes.

(Testimony of Al. Ames.)

Q. What time, if you remember, did the collision occur?

A. Oh, about—I should think about ten thirty; somewhere along there; probably ten twenty.

Q. Who was at the wheel of the “Eagle” at the time of the collision? A. I was.

Q. Was anyone in the pilot-house with you?

A. Yes, sir.

Q. Who? A. Olander was with me.

Q. What was he doing in the pilot-house?

A. He was just around there; that was all; on lookout, I guess.

Q. Sir? A. He was on lookout.

Q. On lookout with you? A. Yes, sir.

Q. Where was Mr. Selig?

A. At the time of the collision?

Q. Yes.

A. He was down below in the engine-room.

Q. How long had Mr. Selig been below, if you remember? [283—216]

A. Oh, probably fifteen minutes.

Q. Do you remember what time the lights, your lights, were put on, if at all, that night before the collision?

A. Why, Mr. Selig turned on the lights shortly before he went down, possibly twenty minutes.

Q. That would be twenty minutes before the collision? A. Yes, sir.

Q. And you have what size lights?

A. 32-candle power.

Q. Sir? A. 32-volt lights.

(Testimony of Al. Ames.)

Q. Mast headlight? A. Yes, sir.

Q. And side-lights? A. Yes, sir.

Q. They are furnished by a dynamo or generator on board the "Eagle"? A. Yes, sir.

Q. How large a vessel is the "Eagle"?

A. Well, I don't know; I'm sure, about sixty feet, I should think.

Q. You don't remember her dimensions?

A. About sixty feet, I should think.

Q. She has a lighting plant and equipment, has she? A. Yes.

Q. You know the kind of lighting plant and equipment?

A. Why, storage batteries and a dynamo.

Q. When had you taken the wheel before the lights were flashed on?

A. Did I take the wheel before? [284—217]

Q. Yes.

A. Yes; just about that time, somewheres around that time.

Q. You had relieved the other man at the wheel, had you? A. Yes, sir.

Q. What time, with reference to the time you turned the lights on?

Mr. COSGROVE.—He didn't say he turned the lights on.

Q. Well, the lights were turned on?

A. Oh, possibly twenty minutes.

Q. Before the lights were turned on?

A. That I took the wheel.

Q. Yes.

(Testimony of Al. Ames.)

A. No; it was approximately the same time.

Q. You took the wheel about the same time that the lights were turned on? A. Yes.

Q. And you think that was about, that it would be about twenty minutes before the collision?

A. Somewheres around that neighborhood, as near as I can figure it out.

Q. Did you, in standing at the wheel, observe the "Wildwood" for any length of time before they came together? A. No, sir; I did not.

Q. How long would you say it was and how far away was the "Wildwood" when she came into collision? A. When I saw her?

Q. Yes, when you first sighted her?

A. Probably five or six—well, fifty or sixty feet.

Q. Fifty or sixty feet?

A. Yes, sir. [285—218]

Q. And did you observe whether she had any lights on at the time?

A. I thought she had one.

Q. What kind of light was that?

A. It was a dim light—not a bright light.

Q. White light? A. White light.

Q. Or a colored light? A. White light.

Q. Was it an electric light or another kind of light?

A. No, it wasn't an electric light.

Q. It was not an electric light? A. No.

Q. What kind was it, that you remember?

A. Well, I suppose an oil light, coal-oil.

(Testimony of Al. Ames.)

Q. An oil light? A. Something of that kind.

Q. Do you remember at this time about the condition of the lens or the glass of the light, this white light that you observed?

A. All I observed is that it was dim. It might have been smoked. That was all.

Q. How high is that, or was that mast from the deck, from the "Wildwood's" deck, if you remember? A. How high the light was?

Q. Yes, the "Wildwood's" light, now, above her deck?

A. I should judge about seven feet, seven or eight feet.

Q. Has the "Wildwood" more than one mast?

A. No; I don't think so.

Q. Which would be seven feet, then, above the "Wildwood's" deck, [286—219] to where this light was? A. Probably that.

Q. Could you tell in which direction the "Wildwood" was going when you saw the dim white light? A. No, sir.

Q. What did you do? Tell his Honor now, just what you did when you saw that light. What happened on board those boats?

A. I put the helm hard to port and tried to get out of the way and the man, Olander, with me, he reversed the engine with the pilot-house control.

Q. Now, in putting your wheel hard to port, it would cause you to roll your wheel which way on board your boat? A. To the right.

Q. To your right? A. Yes.

(Testimony of Al. Ames.)

Q. What effect did that have on your boat and the direction it was then pursuing?

A. It was turning to the right.

Q. Turning to the right? A. Yes.

Q. Do you know, in point of fact, now, how far you did turn before coming into collision?

A. No, I couldn't say how far.

Q. Could you fix, now, with any accuracy, the position of this light on your boat?

A. When I first saw it?

Q. Yes.

A. Why it was about two points off the star-board bow.

Q. Two points off the starboard bow? [287—220] A. Yes.

Q. Will you take and draw—take this piece of paper and draw a diagram of your boat, the “Eagle,” and then a diagram of the “Wildwood.”

(Witness draws diagram.)

A. About in that position (showing) I saw the light.

Q. That (indicating) diagram would be the “Eagle,” would it? A. Yes, sir.

Q. Mark that the “Eagle”?

A. Yes. (Witness does so.)

Q. And that little dot would be your light, would it? A. Yes, sir.

Q. And the boat would be heading in the direction of the arrow that I have marked on the paper?

A. Yes, sir.

(Testimony of Al. Ames.)

Q. That (indicating) little spot would be the approximate position? A. Yes, sir.

Mr. COSGROVE.—Just mark them A, B and C, or something like that.

Mr. MARTIN.—Well, I'll mark that W. That letter W is for the "Wildwood." A. Yes, sir.

Q. And your vessel then swung which way?

A. To the right.

Q. Swung to the right? A. Yes, sir.

Q. Will you describe a circle from the position of the "Eagle" over toward the dot?

A. Yes, sir. (Witness does so.) [288—221]

Q. Which way did the "Wildwood" swing, if you can tell?

A. She was swinging to the right, too, I believe.

Q. She was swinging to the right? A. Yes, sir.

Q. So that she would go to the right and you would go to the right? A. Yes, sir.

Q. Just by way of illustration for his Honor, take the line of your keel and the line immediately at right angles to it, your beam, where would two points of the compass be approximately?

A. Two points?

Q. Yes.

A. That would be 22 degrees and 30 minutes.

Q. 22 degrees and 30 minutes? A. Yes, sir.

Q. That would be perhaps half of the forty-five?

A. Yes, sir.

Q. And by way of illustration, there is the line of the keel there (indicating) and the beam is here

(Testimony of Al. Ames.)

(indicating); 45 degrees would be four points off of that? This would be halfway between, then, would it? A. Yes.

Q. Between the two points? A. Yes.

Q. You struck the "Wildwood" on the stern?

A. Yes, sir.

Q. On the port side? A. Yes, sir. [289—222]

Q. You had no time to spare to do anything from the time you first observed this light, except what you did do? A. No, sir, I didn't.

Q. Did you as soon as possible, or as quickly as you could, turn the vessel's wheel? A. Yes, sir.

Q. As you have described? A. I did.

Q. What did Olander do, according to your best recollection, in the wheel-house?

A. Why he reversed the machine, the engine.

Q. How long did it take him to do that?

A. Oh, it wouldn't be very long.

Q. Describe the method to his Honor of reversing the engine of the "Eagle"?

A. Why it is just a wheel; just turn it around and throw the clutch the other way.

The COURT.—I understand.

Q. Is that what is termed a pilot-house control?

A. Yes, sir; part of it.

Q. Operated, then, sir, from the pilot-house? [290—223] A. Yes, sir.

Q. What did Mr. Selig do, if you know, when the collision occurred?

A. Why he came up on deck, shortly after—well, I'll say immediately.

(Testimony of Al. Ames.)

Q. Sir? A. He came upon deck immediately.

Q. I see. State everything, now, that was done from the time of the collision on the deck, what you did and what they did, and what was said.

A. Why, as soon as we had hit, we backed up and took them aboard, and took the "Wildwood" into town, towed her into town.

Q. Can you recall the circumstances during the time you were making the boat fast and taking her in charge, as you say?

A. We put lines aboard her and made them fast to the tow bitts.

Q. Which way, if you recall, was the "Eagle" headed after you got your lines aboard the "Wildwood"?

A. I could not say exactly which way she was headed. After we got the lines aboard, we headed for Ketchikan, as soon as we got her made fast.

Q. With reference to Mary Island, how far were you off the island at the time of the collision?

A. Why, I should think about three-fourths of a mile. [291—224]

Q. What was the condition of the light on the water; that is, was it dark or light?

A. It was dark.

Q. In the course that you followed, can you tell me, and the course in which you were headed immediately before the collision, can you tell me the character of the light on the mainland shore, on your starboard and on Point Alva, I think you call it?

(Testimony of Al. Ames.)

A. Well, the mountains, I think there were at times shadows in the water, which makes it kind of dark.

Q. Had you been looking in the direction of the "Wildwood" or the direction from whence she came before the collision?

A. We did some of the time.

Q. Was there anything said by Mr. Brindle after he came on board, or by the "Wildwood's" captain, about liquor or anything of that sort?

A. Not to me; no, sir.

Q. Had there been any liquor on board?

A. No, sir.

Q. What was your condition, that of a sober man, or otherwise? A. Sober.

Q. You know whether Mr. Selig had indulged in the use of any liquor on that occasion?

A. I don't think so.

Q. Could you see any side-lights at all on the "Wildwood"? A. I did not.

Mr. MARTIN.—That's all, sir. [292—225]

Cross-examination by Mr. COSGROVE.

Q. This pilot-house control, how far was that from the wheel, Captain? A. Probably two feet.

Q. And you say Mr. Olander was with you at that time? A. Yes, sir.

Q. I understand you to say that you were about fifty feet away from the "Wildwood" when you saw her? A. About that, fifty or sixty feet.

Q. You saw only one light? A. One light.

(Testimony of Al. Ames.)

Q. That's all. You didn't see the boat; you just saw the light? A. I just saw the light.

Q. She was on your starboard bow?

A. Yes, sir.

Q. Under the rules of the road she had the right of way, didn't she? A. Yes, sir.

Q. What did Olander do when he sighted her? When you sighted her what did Olander do?

A. He started to reverse the engine.

Q. Didn't he grab that wheel? A. No.

Q. You remember distinctly? A. Yes, sir.

Q. You remember distinctly the way you threw that wheel? A. I do. [293—226]

Q. When you sighted this light, you didn't know at first whether it was a boat or not or which way she was traveling? A. No, sir.

Q. I thought you said a little while ago that you saw her turn to the starboard.

A. I did after we got a little closer.

Q. How much closer?

A. Oh, only a couple of seconds.

Q. You were only fifty feet away when you first saw her?

A. Somewheres around fifty, sixty feet.

Q. You were traveling ten miles an hour?

A. No.

Q. How fast were you traveling?

A. I don't know; about seven, I guess.

Q. Seven. And the "Wildwood" was traveling at about the same speed? A. I have no doubt.

Q. We'll assume she was traveling between five

(Testimony of Al. Ames.)

and six miles an hour and you were only fifty feet away, and you didn't see which way she was going, when you first saw this light and a couple of seconds after that you saw her turn to starboard?

A. That is about the time we hit.

Q. That is what turned her, wasn't it? [294—227] A. No.

Q. The fact that you hit her? A. No, sir.

Q. Captain, did any appreciable amount of time elapse between the time you saw her and the time you struck her?

A. Well, I should judge about five or six seconds, something like that.

Q. Yes. Did you turn on the lights on your boat that night? A. I did not.

Q. Were they turned on? A. Yes.

Q. How do you know they were turned on?

A. Because Mr. Selig said he was going to turn them on.

Q. I see. But you testified that they were turned on? A. Well, he said that—

Q. (Interrupting.) You don't know anything about it then?

A. He said that and reached up and grabbed the switch.

Q. What? While he was with you?

A. While he was in the pilot-house.

Q. You know which switch he turned?

A. I didn't look, but I suppose it was the right one.

(Testimony of Al. Ames.)

Q. It's all supposition with you about the lights being turned on? A. No, sir; it is not.

Q. All you know about it is what somebody else told you? A. No, sir. [295—228]

Q. What else do you know about it then? How do you know? You don't know of your own knowledge whether the lights were ever turned on that night, do you?

A. Well, if a man says he turned on the lights, I suppose he did.

Q. You believe everything that anybody tells you? A. Not everything.

Q. But you believe what Selig tells you?

A. Well, in that case I would.

Q. You mean, in this particular case you believe him? A. Yes, sir.

Q. But you didn't go out to see whether the lights were turned on and you didn't turn them on yourself? A. No, sir.

Q. The only way you knew that they were turned on is that Selig said he was going to turn them on?

A. He reached up and got hold of the switch. I suppose he turned them on.

Q. And you also suppose he got hold of the right switch, don't you? A. Yes.

Q. And that's all you know about it, isn't it?

A. No.

Q. Oh, now, be fair. That's all you know about it? A. Why certainly that's all I know.

Q. That was about how long before the collision?

A. Oh, possibly twenty minutes.

(Testimony of Al. Ames.)

Q. At the time you went on the ship that night you took your watch at the wheel? [296—229]

A. About that time.

Q. Did Olander go into the pilot-house with you at the time you went in to take the wheel?

Q. (Interrupting.) Or did he remain there after you took the wheel?

A. He remained there after I took the wheel.

Q. Remained there all the time? A. Yes, sir.

Q. You say you looked out once in a while to see what was going on outside, to see if there was any boat in sight? A. Yes.

Q. I think the statement you made to your counsel is that you looked out some of the time. Is that true?

A. I would have to look at the compass once in a while.

Q. Looked at the compass once in a while and looked out of the window once in a while?

A. Yes.

Q. I presume you and Olander are pretty good friends, aren't you?

A. Well, I don't know. I never knew him until this matter.

Q. But naturally you and he were visiting there. You were talking over current events, what happened at Rupert, things of that kind?

A. No, I don't think so.

Q. You remember, don't you, or do you remember what happened that night? [297—229]

(Testimony of Al. Ames.)

A. I don't remember whether we was talking at the time or not?

Q. But during the evening, after you took the wheel, during the twenty minutes that you were there before this collision, don't you remember your talking or not?

A. Oh, I suppose we probably did talk some.

Q. And occasionally you looked out of the window? A. Not occasionally; quite often.

Q. And the night was dark? A. Yes.

Q. And very hazy wasn't it? A. Yes.

Q. In fact, it was so thick you couldn't really see very far ahead?

A. Oh, no; it wasn't so very hazy.

Q. What was your last answer?

A. It wasn't too hazy.

Q. But you couldn't see very far ahead of your boat? A. Not at that time.

Q. No moon shining?

A. I don't think so; I don't know.

Q. You didn't notice a moon? You didn't notice a moon shining?

A. I didn't notice if the moon was shining.

Q. And you remember quite distinctly that there was no liquor aboard? A. Yes, sir. [298—230]

Q. And you hadn't been drinking at Rupert prior to starting out? A. No, sir.

Q. And you only noticed one dim light on the "Wildwood," and two seconds later you hit her. You turned to the starboard and the "Wildwood"

(Testimony of Al. Ames.)

turned to the starboard, and that would throw your wheel hard to port. A. Yes, sir.

Q. And you were fifty feet away, traveling at eight miles an hour, approximately, and you couldn't tell, when you first saw her, which direction she was going in, but later you noticed her turn to starboard. That is what you are testifying to?

A. I noticed which way she was going when we hit her.

Q. But you didn't notice when you first saw her?

A. No, I did not.

Q. But you hit her five seconds later?

A. About that, yes.

Q. And how soon after you saw her did you notice which way she was turning?

A. That was about the time we hit her.

Q. Oh; that was about the time you hit her?

A. Yes.

Q. That is the time you reversed your engine?

A. No; I didn't have anything to do with that. Olander done that.

Q. Well, but on your instructions, didn't he?

A. Yes. [299—231]

Q. He waited until you told him to reverse the engine?

A. Well, he was right there and he reversed the engine.

Q. That is, after you told him to do so?

A. Yes, sir.

Q. That was about the time you hit her?

(Testimony of Al. Ames.)

A. Yes, sir.

Q. You remember talking with Mr. Brindle, young Mr. Brindle, on board at all?

A. I don't know. I just spoke to him and that was all.

Q. You remember being around the after end of the boat where the towing bitts are when you got warned away from them on account of your dangerous position? A. No, I don't.

Q. You don't remember being back there?

A. I don't remember being warned away from there. I was back there.

Q. You remember if Mr. Ryan was there with Mr. Brindle?

A. I suppose he was there. I couldn't say that I know exactly where he was, but he was on board, I know.

Q. Hadn't you had any liquor to drink at all while in Rupert? A. No, sir.

Q. And you knew they had none on board the boat? A. No, sir; not that I know of.

Q. Was it particularly dark at that time due to shadows cast by the mountains? [300—232]

A. It was dark.

Q. Where did that darkness come from? Where did the shadows emanate from, could you tell? Could you tell us now?

A. I couldn't say that I could tell.

Q. How wide is the channel there?

A. Oh, I guess it is about six miles, I should say.

Q. Where would the shadows come from?

(Testimony of Al. Ames.)

A. From the land.

Q. Land ahead of you or behind you?

A. Both ways. I mean to the starboard side and to the head of us.

Q. And the mountains come down close to the water there, don't they? A. Yes, sir.

Q. On both sides?

A. No; they don't come down on both sides.

Q. Which side do they come down on?

A. The starboard side and ahead.

Q. Well, now, with reference to Mary Island and the other shore?

A. Mary Island hasn't got no high mountains.

Q. Oh, it hasn't? A. No.

Q. All the high mountains are on the other side?

A. Yes.

Q. They come down close to the water?

A. Yes, sir.

Mr. COSGROVE.—That's all. [301—233]

Cross-examination by Mr. MARTIN.

Q. Did you mean to be understood as saying that you reversed your engine after you struck the "Wildwood" or before? A. Well, no; before.

Q. Mr. Cosgrove asked you a question of this sort and I thought you said you reversed the engine after you struck the "Wildwood."

A. Well, I didn't understand it that way.

Q. You didn't mean so to testify? A. No.

Q. What is the fact as to how soon you reversed the engine after you saw the light fifty or sixty feet away? A. How is that?

(Testimony of Al. Ames.)

Q. What is the fact, now, as to how soon you reversed it after you saw this light?

A. Well, it was done immediately, in two or three seconds, I guess.

Q. Did you go ashore at all in Prince Rupert?

A. I was ashore up in the cold storage.

Recross-examination by Mr. COSGROVE.

Q. Captain, you are sure you were fifty feet away when you first saw this light and you reversed your engine two or three seconds later?

A. Yes, sir.

Q. Now, with a boat traveling at eight miles an hour and another boat traveling in the opposite direction, fifty feet away, they would meet in just two seconds, so that you did hit her before you reversed the engine?

A. No; I don't think so. She was going full speed, when she hit, astern. [302—234]

Q. But you didn't reverse the engine yourself?

A. No.

Q. You told Joe to do so? A. Yes, sir.

Q. And it wasn't done immediately when you saw the light because you didn't know which direction she was traveling in, did you?

A. I didn't know. I couldn't tell which.

Q. It was a second, or two or three— I think you said four or five seconds after you saw this light that you found out she was going to the starboard. Then you turned your boat to the starboard? A. Yes.

(Testimony of Al. Ames.)

Q. All right. Did you tell Joe to reverse the engine before or after you turned your boat to the starboard. A. Well, it was after.

Q. After you turned your boat to starboard?

A. I was doing it at the time.

Q. Then some appreciable length of time must have elapsed from the time that you saw that white light and turned your boat to starboard until you told Joe to reverse the engine. How much time would you think that would be?

A. I couldn't say.

Q. Well, two or three seconds anyway?

A. I wouldn't say; I couldn't say.

Q. Give us your best guess. A. No— [303—
235]

Q. You saw that light and you hit her just that quick? A. No; it was just a short time.

Q. Give us your idea, from the time you saw the light. A. From the time I saw the lights?

Q. Yes; until you hit?

A. About five or six seconds.

Q. After you saw her, how long before you found out which direction she was traveling in, whether she was going to starboard or port?

A. Oh, I couldn't say as to that, either.

Q. Well, it would be about that, two or three seconds, then? A. It probably would.

Q. That leaves a couple more out of the five you mentioned. Then you turned your boat to starboard? A. Yes, sir.

(Testimony of Al. Ames.)

Q. Then you told Joe to reverse the engine, didn't you? A. Yes, sir.

Mr. COSGROVE.—That's all.

Redirect Examination by Mr. MARTIN.

Q. You mean to fix the time from the time you first saw this light until you told him to reverse the engine as being three out of those five seconds?

A. Oh, I don't say it exactly that way. I don't say that, but it is pretty hard to have a person tell exactly what the time was.

Q. Within what distance from the "Wildwood" would she begin to take the wheel when you throw her hard over? A. The "Wildwood"?

Q. I mean in what distance will she begin to take the wheel when you throw her hard over—the "Eagle"? [304—236]

A. Oh, I suppose she starts immediately after she is thrown hard over. [305—237]

Testimony of Patrick Hamilton, for Claimant.

PATRICK HAMILTON, called as a witness on behalf of the claimant, having been first duly sworn, testified as follows:

Direct Examination by Mr. MARTIN.

Q. Mr. Hamilton, you live in Ketchikan?

A. I do.

Q. And you have been a mariner for some years, have you not? A. Yes, sir.

Q. And have had more or less to do with gasoline

(Testimony of Patrick Hamilton.)

boats, cannery boats, fishing boats, up and down the waters of Ketchikan. A. Yes, sir.

Q. Would you be familiar with, or do you know the gas boat "Wildwood"?

A. I certainly do.

Q. Did you know that boat before she was in collision with the "Eagle" last July, July 23d?

A. I heard of it.

Q. Did you know the boat before that time?

A. Certainly; I knew her since she was launched.

Q. Were you at that time likewise familiar with boats of the same general type, character and description as the "Wildwood"?

A. Well, so far as appearances went, I do.

Q. The "Wildwood," I believe, was built in 1906. Now, would you be able to give us an estimate as to the value of the "Wildwood" before the collision?

A. No, sir; I could not; not if I was going to buy it, I couldn't. I would have to see her, examine her, take her out of water. I might figure then what I could give for the boat. [306—238]

Q. Could you give an estimate generally of the value of vessels of that type and class and that age from other sales and other boats that have been bought and sold and traded.

A. I don't think I could give an answer that way to satisfy anyone, because a boat might not be worth what a man will pay for it when he wants the boat very badly.

(Testimony of Patrick Hamilton.)

Q. You don't think, at this time, that you could give me an estimate as to the "Wildwood's" value?

A. Beg pardon?

Q. You don't think at this time you can give us any estimate as to the "Wildwood's" value before the collision? A. Before the collision?

A. No, I don't know what shape she was in. I don't know how she was fitted up or anything about it. I was never aboard of her at any time in my life.

Q. You have looked at the "Wildwood" recently, have you not?

A. I don't know anything about it. I know when she was building, I understood they were putting very heavy timbers in her, building her very strong for to put steam in her.

Q. Have you had occasion to look at the "Wildwood" at all recently?

A. I went down about four or five days ago and had a look at her.

Q. Would you be able to tell from her then present condition, what her value was before the collision? A. No.

Q. You could not? A. I could not. [307—239]

Q. Could you see enough of the vessel, the part that was not damaged, to furnish any estimate at all?

A. I don't see how I could. I didn't go inside the vessel. I seen the outside of her, that was turned up; I did look at her the way she was laying there on beam ends. [308—240]

Testimony of Steve Selig, in His Own Behalf.

STEVE SELIG, called as a witness in his own behalf, having been first duly sworn, testified as follows:

Direct Examination by Mr. MARTIN.

Q. Mr. Selig, you are the claimant and respondent in this suit? A. Yes, sir.

Q. Now on trial? A. Yes, sir.

Q. And owner of the gas boat "Eagle"?

A. Yes.

Q. Can you tell the Court just the description of the "Eagle," her size, tonnage, when she was built, her value? Give us those details so we may know something about the boat. That is, as far as you can.

A. She was built in 1919 in Tacoma. She was 63 feet long; 14 ft. 7 in. beam, 6 ft. deep, gross tonnage 34, net 27, equipped with a Standard gas engine, 40-horsepower. That's about all I can say about the boat.

Q. Tell us about your engine. What kind of an engine have you? A. Standard gas engine.

Q. What kind of electrical equipment have you on your boat?

A. We have a storage battery system and a dynamo that runs from the main engine—a 32-volt system.

Q. The dynamo is connected by a drive or belt to the main engine?

(Testimony of Steve Selig.)

A. By a belt from the flywheel on the main engine to a pulley on the dynamo. [309—241]

Q. And the dynamo, of course, generates electrical current? A. Yes, sir.

Q. And furnishes your lighting system?

A. Yes, sir.

Q. You have, in addition to that, a storage battery system as well? A. Yes, sir.

Q. What are those batteries?

A. They are 17 cells of Delco lighting system, supposed to be one of the best on the market.

Q. What lights does your vessel carry?

A. She carries a green light on her starboard side and a red light on her port side; two lights and a mast headlight.

Q. How high is your mast headlight above the deck, would you say?

A. The mast headlight is about 16 feet.

Q. That mast headlight, what candle-power is that—do you know?

A. That is six fifteen—15 watts, I think it is, and 6 candle-power. That is, for the side-lights.

Q. The side-light.

A. Anything more than that would be too bright.

Q. Now, the mast headlight? A. The same.

Q. You say her depth was six feet? A. Yes.

Q. You mean by that the draft of the vessel; the vessel's draft in the water, or the standing room inside, headroom?

A. Well, the hold is six feet.

Q. Six feet in the hold? [310—242] A. Yes.

(Testimony of Steve Selig.)

Q. Where is the engine located in the vessel?

A. In the forward part of her. In the living quarters.

Q. Then there is a pilot-house, is there?

A. The pilot-house is right over the engine.

Q. Right over the engine?

A. Yes, right over the engine.

Q. Does that lead into it, the pilot-house, lead into it or made to step into the pilot-house from the main deck?

A. You can go in from the main deck into the pilot-house, but you can't go from the engine-room into the pilot-house.

Q. Sir?

A. You can't come from the engine to the pilot-house, but you can come from the engine-room out on the deck. That's the only way up and down.

Q. I will ask you whether, in addition to the pilot-house, she has any other house above deck?

A. Only the pilot-house. There is a break that is built along forward to make the living accommodations, and the pilot-house is on top of that.

Q. How long is the pilot-house?

A. Not very large pilot-house, probably about ten feet in length and about eight feet wide.

Q. The living quarters you say are below that?

A. All below.

Q. All below the main deck?

A. Below the main deck.

Q. Are there any lights or port-holes? [311—
243]

(Testimony of Steve Selig.)

A. She has five port holes on each side about as big as this plate (pointing to tray on Judge's desk) here.

Q. As large around as that plate?

A. Pretty much. It may be an inch smaller than that. She has lights over all her beam, from one end of that cabin to the other end and her forecastle is pretty much from that break to that (showing). There's eight berths.

Q. Several lights on each side?

A. Five port-holes on the side.

Q. What lights have you in the cabin?

A. That's what were speaking about now. I have several of them 32 candle-power lights just overhead like these lights are (referring to lights in courtroom).

Q. You have seven? A. Several.

Q. Seven? A. Or more.

Q. What is the effect when those lights are lighted with respect to the port-holes, as to the lights being observed in your vessel?

A. Well, you could easily see through the port-holes because she has five of them, and those lights would shine out the same as through those windows (pointing). [312—244]

Q. Have you a range-light? A. Yes, sir.

Q. That's aft, is it, or forward?

A. That's on the same mast as your headlight is on; it's on the top of the mast.

Q. What course did you make on the night in

(Testimony of Steve Selig.)

question from Prince Rupert up to Mary Island, at the point of collision?

A. I was steering northwest by west, half west. That's a course that takes me one mile off Tree Point and one mile off Mary Island.

Q. Off Mary Island light?

A. Yes; in fog or dark.

Q. Have you measured that course to know whether those distances are accurate?

A. Yes, I have measured them and run them hundreds and thousands of times.

Q. What time did you leave Prince Rupert on the night in question? A. Three-ten.

Q. What time did the collision occur?

A. Ten-twenty when we first landed on her.
[313—245]

Q. What had you been doing immediately before the collision?

A. Fifteen minutes before the collision, I was sitting in the pilot-house reading a Prince Rupert paper.

Q. Light on in your pilot-house?

A. I had lights to read by; sure.

Q. Who was in the pilot-house with you?

A. My two men.

Q. What are their names?

A. Joe Olander and Al Ames.

Q. How long did you remain in the pilot-house?

A. I remained in the pilot-house, to the best of my judgment, until about ten minutes before this

(Testimony of Steve Selig.)

happened. I was in the pilot-house ten or fifteen minutes at the most.

Q. Respecting your lights before the collision, did you know whether they were on or off?

A. I put them on myself.

Q. How long before the collision?

A. I put them on to read by, switched them on myself fifteen minutes before I went below down into the engine-room.

Q. Respecting now the condition of your engine-room or the condition of the light down below?

A. Well, your button works down below different than the pilot-house. The pilot-house button switches on the mast headlight right in the pilot-house. Down below you have different switches for your engine-room lights.

Q. Did you have your engine-room lights lighted before the collision?

A. Everything was on full blast.

Q. How long before? [314—246]

A. Fifteen minutes.

Q. Was there any liquor used on board that vessel?

A. Not that I seen that evening. I was the only man that was ashore in Prince Rupert.

Q. What, if anything, was said or spoken about liquor?

A. Well, Mr. Brindle, when he come aboard there, he was kind of little excited, you know; naturally would be, you know, in a case like that, and he jumped around and said, "What's the matter?"

(Testimony of Steve Selig.)

You fellows all drunk?" I said, "Yes, I guess so," and he said, "It looks like Al has got liquor." I said, "Probably he has. I don't know anything about it. He wasn't uptown." That's about all that was said.

Q. Was there any liquor there on board that you know of? A. Not that I seen, sir.

Q. Would you have known it?

A. Well, Mr. Ames is a hard man to study out. I have had him two or three months at a time and I don't think he spoke two or three words to me.

Q. What is his demeanor or manner as to talking to anybody?

A. I don't know what it is, I'm sure. He don't speak very much.

Q. Did you observe anything unusual in his appearance that night that was in anywise different from his usual demeanor?

A. No, I did not. I was in the pilot-house from Tree Point until I was off Black Rock and that would have taken approximately 35 minutes to make Mary Island light, and I was with those two boys there reading the paper. When it got dark enough I read a little bit and then went down below. I left them about 15 minutes before it happened.
[315—247]

Q. Tell us, if you recall, what the condition of the sky and sea was that night.

A. There was a beautiful night out on the water—fine. I sat up and watched fish all the way from Cape Fox in.

(Testimony of Steve Selig.)

Q. Would you say that it was clear and dark, or light and dark?

A. When we got up to Black Rock it got dark and calm, shady on the water.

Q. Tell his Honor what effect that calm, dark shadow has on the water. In other words, what was the condition of those waters that you were heading into?

A. Heading into any heavy land, any mountains, it is dark. Any sea-faring man knows that. We all know that.

Q. Does it make it light or increase the darkness if the sea is calm?

A. Well, a calm on a night like that is the worst you have to contend with. On any other night a ripple on the water shows light. With calm water it is just the same as traveling in the woods.

Q. Do you recall where the moon was that night?

A. Yes.

Q. Whether there was any moonlight to speak of?

A. Yes, there was a moon. That's the way the moon was when the accident happened, over a peak, over a mountain, that way (indicating).

Q. Just illustrate that.

A. That's a mountain there (indicating); that's the heavy mountains on the Quadra side, the mainland shore. The moon was there (pointing); very cloudy over it. You could only see it once in a while. Just up about ten or fifteen minutes over the mountains. [316—248]

(Testimony of Steve Selig.)

Q. Did you, or did you not, see the "Wildwood" at any time before the collision, before the two vessels came together? A. I did not.

Q. Did you see her immediately after the collision? A. I did.

Q. Did you have occasion to examine the light?

A. The only light I seen was an oil lamp in front of the mast, stuck very low so that you could stand up, reach out and put it in. One oil lamp burning; that's all I seen on her.

Q. Did you examine the "Wildwood" to see whether her side-lights were burning?

A. There were no side-lights burning.

Q. Did you observe anything peculiar or unusual in the glass or surface of the glass of this mast headlight that you did observe?

A. Oh, it wasn't any of the brightest kind of light for an oil lamp. They ain't like an electric light. They wouldn't show up very bright with the vibration, hanging on to the mast, they would bob up and down a little bit.

Q. What was done immediately following the collision?

A. Well, there was a line put on. Mr. Brindle brought a line aboard when he left her and made it fast to the bitts, and she was sinking all the time, going down; so he come aboard with his grip and some of the things he had, I guess, and I started the machine myself, took charge myself of the boat and we started to steer right in under the Mary Island lighthouse.

(Testimony of Steve Selig.)

Q. What was your purpose in doing that?

A. Well, the boat was sinking and she only had one line on her, and in swaying back and forth, I was afraid she would [317—249] break the line and go down in deep water. A chain would stand the pressure, and I wanted to get in close to the shore so we could fix her up better and save the boat and save her cargo. That was my intention. I went as close to the beach as I could, and we got two more lines on her.

Q. How far off Mary Island light were you when the two vessels came together? That is, when you went up on deck?

A. My judgment would be one mile.

Q. Would that be north or south, or what direction would it be?

A. Well, it would be about three points to the southern of the lighthouse.

Q. Well, point out to his Honor on the chart the place in which you were?

A. (Examines chart.) Well, they have got it pretty much marked out here. Where that X is, right there (pointing).

Q. Where the X is.

A. Yes, about three points, looking down a little towards Tree Point, you know.

Q. You then headed up in to the lighthouse?

A. Yes, we went right in under the lighthouse, as close as I dared to go.

Q. Did you hear the statement by the lighthouse-

(Testimony of Steve Selig.)

keeper as to the conversations out on your boat occurring on board the vessel? A. Yes.

Q. What is your explanation as to that?

A. Well, my explanation is this: They couldn't hear anything from where this happened, but from where I was, we could talk back and forth from where I stopped my engine. We put two more lines on the boat where I slowed my engine up, [318—250] because I had to keep to shore as close as I dared so that if she would sink, we could get her back. My intention was to land her in this cove right there (pointing), beach her there.

Q. That would be on the flat there?

A. There was a good flat and I thought if we could get her as far as that, we'd be doing mighty well; and I looked things over and we finally decided to come to Ketchikan, so we proceeded on. We got in at five o'clock in the morning, around five o'clock with the boat.

EVENING SESSION—Jan. 20, 1922.

STEVE SELIG on witness-stand.

Direct Examination (Resumed).

Q. When did you go to sea?

A. It's a lifetime experience on the water.

Q. Tell the Court very briefly just what class of vessels you went to sea in first, how long you followed it and where, and how long out here?

A. Well, I think quite a long while. Of course, I never done anything else, except go to sea on the

(Testimony of Steve Selig.)

Atlantic Coast and the Gulf of Mexico and the Pacific.

Q. You are a man how old?

A. Thirty-nine the seventh day of June.

Q. And you are the owner and master of the "Eagle"? A. Yes.

Q. And you have likewise served as master and owner of other [319—251] vessels?

A. Yes, sir.

Q. Mr. Selig, was Mary Island light observable by you when you left the deck? A. Yes, sir.

Q. This, you say, was about twenty minutes before the collision?

A. Yes; fifteen or twenty minutes.

Q. That is a light of what magnitude, do you know?

A. That is a pretty strong light they have there.

Q. And on the night in question, it was easily seen? A. Yes.

Q. Your course, I believe you said, measured from Tree Point past Mary Island, bound north?

A. Yes, sir.

Q. You have been over that course how many times? A. Lots of times.

Q. Yes. That would take you past Mary Island with what clearance? A. One mile off.

Q. Did you notice then, when you left the deck, that you were on your course? A. Yes, sir.

Q. Which, if uninterrupted, would have gone on as indicated?

(Testimony of Steve Selig.)

A. Yes; that would have carried me right clear, fog or dark, any old weather.

Q. When the actual collision occurred, the impact of the vessels, I believe you said you were down in the engine-room? A. I was at the time.

Q. Tell us what took place in the engine-room; what, if anything about the condition of the engine? [320—252]

A. Well, the first I knew that there was something happened, why I noticed they reversed the engine, and I noticed she was reversed in such a way that it wouldn't give lots of power because there was too much speed astern. I jumped up to the engine myself and slowed her down, because there was nothing but fire flying from it, usually does from any gasoline engine. I put some gasoline on the clutch so that she would take hold, and then it wasn't very long, because of the fact that everything was handy, I felt just a slight jar; very slight jar, and I thought, oh, that's just a log, and nothing to bother about.

Q. Would you be able to give us the lapse of time between the reversal of the engine and the sparks flying out and the impact or the slight jar that you speak of?

A. Well, very shortly, because I acted quickly, because I knew there was something up.

Q. Would you be able to estimate it in seconds?

A. Well, you can do it all in three seconds down there. You can throw the engine from full

(Testimony of Steve Selig.)

speed ahead to full speed astern in there in one second; that quick.

Q. How long would it take—I withdraw that. What is the normal speed of your boat?

A. Seven miles.

Q. And in what distance, if you know, can your vessel be brought to a stop and the engine cause her to go astern under reversed engines?

A. Well, if the boat is in good trim and the engine is working right, in a hundred and twenty-five feet, I think I can stop that boat, I'm pretty sure of it, going astern. [321—253]

Q. Could you be going astern within that time?

A. I think she would have a little headway astern; not very much.

Q. Within 100 or 125 feet, if your wheel is hard over to starboard or port what swing would she make, commencing now before you reversed your engine, commencing at your normal speed of seven miles per hour?

A. In a hundred and twenty-five feet, I'll make a half circle.

Q. Well, by a half circle, you mean a hemisphere, 180 degrees?

A. I mean sixteen points of the compass.

Q. Sixteen points of the compass; a complete half circle.

A. If you were headed north, you would be heading south. And from dead slow, I'll turn a 60-foot boat around in 125 feet.

(Testimony of Steve Selig.)

Q. And you take into consideration in starting, or going ahead, when you throw your wheel hard over, you were going ahead at the rate of seven miles per hour.

A. Well, no; the boat will slow down some.

Q. If you were going ahead seven miles per hour and throw your wheel hard over and reverse your engines at the same time, or approximately the same time, within what length would you make an eight-point turn?

A. She'll make it quicker with the speed she had ahead than the speed she has backing. It has a tendency to throw her pretty quick.

Q. Could you estimate—

Mr. COSGROVE.—(Interrupting.) I don't like to object to this line of testimony, but it is absolutely immaterial. It isn't what she can do; it's what she did do.

The COURT.—Yes. [322—254]

Mr. MARTIN.—I think it is material, if your Honor please.

The COURT.—Well, he may answer. Largely immaterial as I see it yet. I don't see the materiality of it.

Mr. MARTIN.—Depending; if your Honor please, upon the reasonableness of the respective claims.

The COURT.—Very well.

Q. At the time of the collision or impact, did you know that your vessel had come into contact with another vessel?

(Testimony of Steve Selig.)

A. I don't quite get you.

Q. Well, at the time you—at the time of the collision, could you tell what you had struck, or did you know that you had come in contact with another vessel? A. No, sir.

Q. Did it do your own vessel any harm?

A. No, sir; it didn't even scratch the paint on her.

Q. Where are your wheel ropes with respect to your engine and your reverse gear down below in the engine-room?

A. Right over your head. You can see everything working right over your head.

Q. Is there anything in the way the wheel ropes work, or anything that you observed that would let you know whether they were turning at about the time of the reversal?

A. Oh, yes; I noticed we were getting up against something. I could see the wheel turning and the engine going full speed astern. That would indicate some danger of some kind.

Q. Did you afterwards ascertain whether the wheel had been thrown hard to starboard or hard to port, from the position of the wheel?

A. Yes, I noticed that myself. I was the man that took the wheel myself and I noticed the wheel was thrown hard to port. [323—255]

Q. And that hard aport wheel would have taken your vessel to the starboard?

A. I presume so.

Q. Did you observe anything floating away from the other craft, the "Wildwood"?

(Testimony of Steve Selig.)

A. After she settled alongside there was a small boat and hatches I seen floating away. That's all I seen go.

Q. You were on deck, were you?

A. I was on deck.

Q. Did you observe any fish floating away?

A. No, I couldn't see any fish floating away. I could see the fish in the hold when the boat sunk down, but I didn't see any float away.

Q. Where do you carry your fish cargo in your vessel?

A. My boat has carrying capacity aft.

Q. What effect would that have on the trim of the vessel?

A. It makes it a nicer boat to handle when they are loaded.

Q. Where does the "Wildwood" carry her fish?

A. She's a different boat altogether. Her machine sets aft and the cargo forward.

Q. If she is loaded with fish or loaded with cargo under those circumstances, what is the effect upon her wheel, upon her steering?

A. All the ships I have been in that was that way was a little hard to manage. They are down by the nose too much. They draw more water forward than they do aft. [324—256]

Q. After the collision and after your vessels were righted up and on their course, what, if anything, did the two young men on the "Wildwood" do?

A. Well, after we were on our course, going home, they went to bed.

(Testimony of Steve Selig.)

Q. What did they do?

A. They went to bed.

Q. Did they make any statement to you as to their fatigue or lack of sleep, or how many hours they had been on duty?

A. Not exactly to me, any more than what my men told me—

Q. (Interrupting.) Not what they told you. What, if anything, did you hear?

A. I didn't hear them say anything about sleep; not them two boys, neither one of them.

Q. Now, with respect to your own men, your own crew, had you, had they had a fresh night's sleep?

Mr. COSGROVE.—Just a moment. If you know, I presume.

Q. Yes; if you know?

A. No; myself I don't know. Really I never asked the boys about that.

Q. I mean your own crew?

A. Oh, my boys?

Q. Yes.

A. My boys appeared to be alright. We had long hours, ten hours Prince Rupert to town.

Q. Did you hear any statement made by the master of the "Wildwood" or by Mr. Brindle, in your presence, or on deck, as to how it happened, or did you direct any inquiry to them? [325—257]

A. Yes, I did. I asked them how it happened.

Q. You tell the judges just what you said. Give the details of the conversation, what was said.

(Testimony of Steve Selig.)

A. Well, after the boat had sunk and the lines were on her, we towed her in to shore a little and I figured on beaching her there, and I slowed my engine down. She was whirling me around there like this before I could get her to going straight, because she was sunk and just like that (showing) so I stopped and got her evened up so that we could tow her, and I said to the boys, "Now, tell me how this happened." See? And the boys just told me how this boat was and they placed her off the starboard bow about two points, and Mr. Ames said, "I tried to get clear, reversed my engine and throwed the wheel over and cut across the bow, and we were too close before they could get away from each other." That's the words that was told me on the boat.

Q. Mr. Ames told you that?

A. Mr. Ames, the man at the wheel.

Q. Did he make that statement to you in the presence of Mr. Brindle—

A. Yes, Mr. Ames is the man on my boat.

Q. Did he make that statement to you in the presence of Brindle and the other fellow?

A. At that time they were all on deck of the boat, but whether they heard it or not, I don't know.
[326—258]

Q. Respecting your exhaust, describe to the Court the kind of exhaust you had.

A. Well, coming up on the course that I was coming, I don't think that the exhaust on my boat could be heard a mile away on that night, because the exhaust on my boat is half under water, and if the

(Testimony of Steve Selig.)

boat was coming head on, that shuts it back. It has a brass outfit over that exhaust and it would throw the sound back toward Tree Point. The sound would naturally go back. It wouldn't come ahead.

Cross-examination by Mr. COSGROVE.

Q. The exhaust of your boat is half under water?

A. Yes, sir. When she is loaded, it's under water.

Q. Is your exhaust ever above the water—I mean your boat's exhaust?

A. When she's on the drydock.

Q. Is that the only time?

A. Yes, when she has any ballast any load, she is under water. When she is unballasted, she is half under water. At that time she was half under water. [327—259]

Q. Your exhaust could be heard a mile away, could it? A. I don't imagine it could; no.

Q. How far away do you imagine it could be heard?

A. Well, it couldn't be heard a mile away that night.

Q. How much less than a mile could it be heard?

A. Well, you might hear it five hundred feet.

Q. Could it be heard half a mile?

A. No, sir.

Q. You know anything about that?

A. I do.

Q. Well, now give us your best opinion so far as this is concerned, as to how far the exhaust of your

(Testimony of Steve Selig.)

engine could be heard on a dark, clear night.

A. When my exhaust is half under water, I imagine you could hear it five hundred feet; that's the best you could hear it. You could hear it that far and that's about all. Very quiet exhaust; lots of water. It's not a dry exhaust; it's a wet exhaust; water running through it. It's like one of those overhead Diesel boats.

Q. You remember what course you steered—from what point to Mary Island light?

A. I steered from Tree Point to Mary Island light.

Q. What was your course?

A. Northwest by west, half west.

Q. Northwest by west, one-half west?

A. Yes.

Q. That is from Tree Point light to Mary Island.

A. Yes; that's not an adjusted compass. That is my own compass and that is the course that takes me clear in my boat. That wouldn't run a steamship up there. That would land a [328—260] steamer maybe over on the Quadra side or down on Duke Island.

Q. Or somewhere else?

A. Yes; but that runs my boat. That is the compass I was navigating by.

Q. That is a course that is peculiar to your boat?

A. Yes; it wouldn't do for another boat.

Q. You don't know anybody else that steers that course between those two points?

(Testimony of Steve Selig.)

A. Different boats have different compasses.

Q. Now, when you left Prince Rupert, did you take the wheel? A. Yes, I did.

Q. Where were your two men?

A. They were with me aboard the boat all the time.

Q. What were they doing?

A. They usually take a little sleep at that time because of the narrows, and I wouldn't let my men have the wheel through there.

Q. Can't afford to trust them?

A. There's very few men knows the channel through there.

Q. But there is also another reason you didn't want to trust them coming out of Rupert?

A. Yes, I would trust those two boys.

Q. Huh? A. I would trust those two boys.

Q. Coming out of Rupert?

A. They weren't uptown in Rupert.

Q. How do you know they weren't?

A. They were aboard the boat. I had them pitching fish and I entered and cleared the boat.
[329—261]

Q. Did you go to town yourself?

A. I had to go to the customs-house and the American consul myself.

Q. How long were you in Prince Rupert on that trip?

(Testimony of Steve Selig.)

A. About six hours.

Q. How much of that time were you uptown?

A. I spent about two hours of that time getting around the customs-house and the American consul.

Q. You know where they were when you were uptown?

A. Pitching fish aboard the boat; tallying fish and pitching fish.

Q. That is, you left them there and found them there? A. I certainly did.

Q. Well, now, when you got aboard, you took the wheel? A. Yes, sir.

Q. How long did you keep the wheel?

A. Off and on I keep the wheel an hour, two hours, three hours.

Q. I mean on that afternoon?

A. Oh, I just don't remember how long I kept the wheel.

Q. Did you stay there until nine o'clock?

A. Oh, no; we take it shift and shift.

Q. Keep any record of it?

A. No, not running on a short run like that much.

Q. You keep a log-book?

A. No; I keep a little pocket-book, note-book down aboard the boat, you know.

Q. Do you remember how long you were on, you were at the wheel that afternoon?

A. Oh, no; we don't keep track of how long each man is at the wheel. [330—262]

Q. Give us your best recollection.

(Testimony of Steve Selig.)

A. My best recollection is that we steered the boat from ten minutes past three—

Q. (Interrupting.) I'm talking about you now.

A. (Continuing.) Until half-past ten, between the three of us, and I had my trick at the wheel.

The COURT.—He wants to know how long you stayed at the wheel?

A. I can't answer that question, because I never timed myself.

Q. When did Joe Olander steer?

A. Well, we all took a trick at the wheel.

Q. Did you that afternoon?

A. Yes, I did.

Q. Did Olander take the wheel?

A. Yes, he did.

Q. Where is he now?

A. Mr. Olander, as far as I can understand, he is out trapping.

Q. When did he get away?

A. So far as I was informed, he is gone about six weeks or a month.

Q. You met him in Seattle?

A. I did not.

Q. Did you see him there? A. No.

Q. How long before that did you see him?

A. I haven't seen him, it must be six or seven weeks; probably a little more than that.

Q. Did you see him six or seven weeks ago?

A. It's about that time, I think.

Q. You knew at that time this case was to be tried, did you not? [331—263]

(Testimony of Steve Selig.)

A. No; I didn't know it at that time.

Q. Oh, you didn't know this case was going to be tried at this court?

A. No; we offered you a settlement since that time.

Q. Yes, but you took no precautions to maintain the presence of Olander in the event your offer of settlement was not accepted?

A. We offered you a settlement and still we was making preparations for hearing this case.

Q. Your preparations did not include the detention of Mr. Olander?

A. At that time Mr. Olander went out somewhere and hadn't come back yet, and I can't find out where he is.

Q. You took no precaution to insure his presence in the event that the settlement was unsuccessful?

A. None whatever.

Q. Even though you knew at that time that he was the man who was in the pilot-house with Mr. Ames, the helmsman at the time of the collision?

A. Yes, he was the man that was there.

Q. And you knew that at that time?

A. Yes, I knew that he was there, in the pilot-house.

Q. You don't remember how much of the voyage from Rupert on that occasion it was that Mr. Olander steered?

A. Well, you can divide it into three—nine hours practically between the three of us. That is as near as I can give it to you.

(Testimony of Steve Selig.)

Q. Well, I just want to know what kind of a division it was—how much of it did you take, what part of it, day or night? [332—264] Could you tell whether it was two to three or two to four—

A. (Interrupting.) Well, from three o'clock in the afternoon until ten o'clock at night is part daylight and part dark.

Q. Yes.

A. And the three of us steered during that time, and I said our watches usually ran probably three or four hours apiece, which would be the nine hours divided by three. You put me down for three hours, Mr. Olander for three hours and Mr. Ames three hours.

Q. Which of the three did you take?

A. I took the first three through the channel?

Q. Who took the second three?

A. Mr. Olander.

Q. Who took the third? A. Mr. Ames.

Q. But, I know, but you testified during your direct examination that you had just given up the wheel to Ames.

A. I didn't say any such a thing.

Q. What did you say about it?

A. Mr. Olander gave the wheel to Mr. Ames.

Q. In your presence?

A. I sat in the pilot-house reading.

Q. You had the lights all lit up there.

A. Yes, sir.

Q. How long had you been reading there?

A. I was reading—it was daylight all the way,

(Testimony of Steve Selig.)

and when it got dark I switched the lights on and went below.

Q. Had you been reading during the time the lights were turned on?

A. I switched the lights on and read a minute. I had been reading [333—265] till it got dark enough to put the lights on and put the lights on and went below to oil my engine up and I was getting ready to go to bed.

Q. You didn't read around there after you turned the lights on in the pilot-house?

A. No, I didn't say that.

Q. What was your idea in turning the lights on in the pilot-house after dark?

A. I had to see. I was reading and didn't finish.

Q. Don't you know, as a mariner, with the experience that you have had, that turning the lights on in the pilot-house shuts off your view from the outside?

A. Yes, but I'm telling you that I shut them off and went out.

Q. No, you didn't either. You said you turned the lights on to read by, to see, and then went down below.

A. Well, I did. You wouldn't think I would go below with the lights on in the pilot-house.

Q. What did you do, turn them on again?

A. You would turn your lights off in the pilot-house.

(Testimony of Steve Selig.)

Q. I'm not asking you what you would do, or I would do, but what you did do.

A. That's what I did do.

Q. Then you turned them on and how long did you read? A. Oh, probably a minute.

Q. Can you fix it any more definitely?

A. Just a minute.

Q. Oh, you read just a minute?

A. Just a minute; sure.

Q. Then you turned them out? [334—266]

A. Turned the lights out in the pilot-house, or the light in the pilot-house. One light, that's all that's in the pilot-house, over the berth.

Q. Then you went below? A. I did.

Q. Are you sure, Mr. Selig, when you turned that light out, you didn't turn your masthead and your side-lights out?

A. No, sir; I didn't turn them out. They were below.

Q. How did you get that idea?

A. I got a look at them when I passed them.

Q. Going into your pilot-house, or going out of your pilot-house?

A. When I stepped out of my pilot-house door, I could see; one port light looked me in the face.

Q. It is not above the head, then, is it?

A. It's right there, looking right at you.

Q. That's not over your head.

A. That light you speak of?

Q. Yes. A. That port light?

Q. Yes.

(Testimony of Steve Selig.)

A. Just that high over your head (showing).

Q. Can your side-lights be seen above the house, say, from the "Wildwood," if the "Eagle" were head on? In other words, is the pilot-house— I suppose that the side-lights are on top of the pilot-house? A. Yes.

Q. Now, suppose the "Eagle" was coming on, head on, to the "Wildwood"? A. Yes. [335—267]

Q. Could a person on the other side see the side-lights of the "Eagle"?

A. You can see them if you are right ahead or anywhere around near there.

Q. In other words, the pilot-house of the "Eagle" would be very much above the cabin or the pilot-house of the "Wildwood"?

A. Oh, no; she stands up higher in the water. She has to stand inspection before she can go out, and pass.

Q. I'm talking about what a person could see. Here (pointing) is the "Wildwood" and suppose the "Eagle" comes on that way. Could the side-lights be seen over the top of the "Wildwood"?

A. Over the top of her?

Q. Yes.

A. You mean on board the "Wildwood"?

Q. No. Are not your side-lights higher than the cabin or pilot-house of the "Wildwood"?

A. Well, my side-lights on the pilot-house would have to be about probably a foot higher than the "Wildwood's" cabin and house is.

(Testimony of Steve Selig.)

Q. So they could be very readily seen from the other side? A. I imagine so; yes.

Q. All right. Now, you had been down in your cabin about how long before the collision happened?

A. I was there about fifteen minutes.

Q. What were you doing?

A. I oiled my engine up and was making my berth up; just getting ready to lay down.

Q. All your lights burning? A. Fine.

Q. Were all those lights burning while you were up in the pilot-house? [336—268]

A. The lights were burning.

Q. Down in the cabin?

A. Lights burning in the cabin down below.

Q. You turned them on the same time that you did the others?

A. I have a switch down below for those lights.

Q. Did you turn them on after you got down there, or were they turned on before you got down there? A. The lights in the cabin?

Q. Yes.

A. I turned them on a little bit before; went out of the pilot-house, put the lights on and read a minute or two.

Q. You turn all your lights on from the pilot-house, do you? A. All my running lights.

Q. Is it customary for you to turn your lights on yourself when you are traveling?

A. Well, that's a lookout for a man that owns a boat like I am. I have to look out for those things, and it is my duty to look out for my interest.

(Testimony of Steve Selig.)

Q. You say that that night, the 23d of July, was a dark night? A. Well—

Q. Did you pay much attention to it?

A. I know what kind of a night it was. I seen lots darker nights and lots brighter ones.

Q. What is your idea about that night—pretty dark?

A. That was a fairly dark night. It wasn't what you would call a real dark night.

Q. Not clear? A. Calm.

Q. You were traveling through some deep shadows, were you not? [337—269]

A. It was kind of shadowy on the mainland shore. Point Alva shows dark land. It is harder to come into the land than it is going to *see*.

Q. I realize that. And these shadows that were caused by the mountains on Point Alva shore were pretty heavy?

A. Shadowy water and the water was calm.

Q. When did you run into them; what time?

A. Ten twenty.

Q. Run into the shadows then?

A. Oh, the shadows would be, the shadowy land at that time, the mainland shore we had been running in that for about twenty minutes before the collision.

Q. Do you mean to tell me that Mount Alva doesn't cast shadows over the water sooner than twenty minutes.

A. The closer you come to Mary Island, you come to a peak or the narrowest place, naturally you

(Testimony of Steve Selig.)

come to within where the shadows would come in closer to you, so out here (pointing) the land is further away from you than it is in here (pointing), and we was coming gradually into that deep shadow.

Q. Where did you first strike the shadow. It hadn't been dark very long?

A. As I said, twenty minutes, that was putting us close to where we hit.

Q. That was the dangerous part of your trip, wasn't it, when you went into those shadows?

A. Yes; that's kind of dangerous.

Q. You have no insurance on your boat?

A. Yes, sir. [338—270]

Q. What was your idea in going to bed then? Why didn't you stay up and see your boat through the deep shadows?

A. It's not necessary to stay up when you have got a navigator like I am aboard.

Q. But you weren't doing the navigating at that time? A. I was.

Q. I thought you said you went below?

A. I give them the course from time to time and tell them if anything comes up, call me.

Q. And they did call you after they had run down another boat? That is true, is it not?

A. No, they didn't call me.

Q. Then they didn't call you?

A. I came up there myself.

Q. What in the world called your attention to the fact that you had run into a boat?

(Testimony of Steve Selig.)

A. Called my attention to it?

Q. Yes.

A. The engine was going full speed astern and the wheel ropes turning in my berth.

Q. You didn't feel a jar or impact of striking this boat?

A. Yes; a slight jar. It wouldn't be any more than if it hit a cigar-box.

Q. Have you seen the "Wildwood"?

A. She is down here. I seen her to-day. Look out the window and you can see her.

Q. You noticed how she was damaged?

A. Yes.

Q. I wonder what would have happened to her if your boat was going full speed, if the engine had not been reversed. [339—271]

A. If we had hit her square, we'd went through her and probably never noticed it.

Q. What your boat did do was just to draw up to her side and push her away?

A. Glancing blow; that's all; just a slight glancing blow.

Q. Of course, you are not familiar with the circumstances of the collision, having been down below for twenty minutes?

A. I could feel the jar.

Q. I thought you said there was no jar; that you couldn't feel it.

A. Yes, but it didn't knock me down. It wasn't like it would knock you down off your feet.

Q. But you were in bed at the time?

(Testimony of Steve Selig.)

A. No; I was not. The engine was going full speed. I was standing at the engine. I never got a chance to get into bed.

Q. It didn't take you fifteen minutes to get down there from the deck.

A. Yes, but I didn't tell you I was fifteen minutes in bed. I told you I oiled my engine up and was making my berth up, getting ready to go to bed.

Q. How long had you been working on the engine?

A. To oil a machine like that it might take you five, ten or fifteen minutes, you know, if you do it right.

Q. Did you spend any time making up your bed?

A. Oh, yes.

Q. How much time?

A. Oh, I don't think you could make up a nice bed like we have on board those boats in less than five minutes, three, four or five minutes. [340—272]

Q. Which did you do first?

A. I made up the bed.

Q. Then you got into it?

A. No, I never got quite into it.

Q. What makes you believe that this collision occurred at twenty minutes past ten?

A. I figured the time at twenty minutes past ten. That's what time it said by our clock in our vessel. I couldn't tell you what it said by the Mary Island clock.

(Testimony of Steve Selig.)

Q. You had been twenty minutes away from the pilothouse?

A. Between fifteen and twenty minutes.

Q. So that it was about ten o'clock when you entered these shadows, was it, that you speak of, or was it before that?

A. I told you that we probably had been running in the shadows probably twenty or thirty minutes.

The COURT.—Just answer the question. Was it before or after; not what you told him.

A. We were running in the shadows from twenty minutes before we hit the boat until we hit the boat.

Q. How was the night before you struck this shadowy area?

A. How was the night before this?

Q. Yes.

A. I can't remember what it was the night before this one.

Q. I'm talking about conditions the same night?

A. How was the night before we struck the shadows?

Q. How were conditions generally—clear and bright? A. Oh, yes; fine evening.

Q. Fine moon?

A. No, not at that time there was no moon. Moon had just come over the mountains. [341—273]

Q. Then it was pretty dark from half-past seven on? A. No, not in the summer time.

Q. How was it that night?

A. No, it wasn't dark, very dark, you know, at that time of the year, you know.

(Testimony of Steve Selig.)

Q. Well that night it got pretty shadowy along about eight o'clock, you say?

A. Half-past eight?

Q. No, about eight?

A. No, it wouldn't be getting dark until nine o'clock.

Q. Nine o'clock? A. Yes.

Q. Well, you didn't pay much attention to the darkness, did you?

A. Oh, not particularly, you know.

Q. Well, your recollection is that it didn't get dark until about nine o'clock?

A. Somewheres along there; summer-time, July, you know.

Q. But your recollection of conditions that night is that it was pretty dark about that time?

A. Getting dusky.

Q. How dark would you say it was along about nine o'clock, pretty dark?

A. Well, you'd call it dark.

Q. Why didn't you turn your side-lights on then? Why did you wait till after ten o'clock?

A. At nine o'clock?

Q. Yes.

A. It wasn't dark enough for that, because you couldn't see Mary Islands at that time yet, Mary Island flash at that time, but *I flash* could manage to pick up Hog Rock and Black [342—274] Rock.

Q. You didn't turn on your lights at nine o'clock?

A. No, I didn't.

Q. And you say it was getting pretty dark?

(Testimony of Steve Selig.)

A. Getting dusky.

Q. And you waited more than an hour before you turned them on, didn't you?

A. No, I didn't wait more than an hour.

Q. How long did you wait?

A. I turned them on shortly after that.

Q. What time did you turn them on?

A. That I couldn't say, what time I turned them on.

Q. I thought you told me it was fifteen minutes before you went down below?

A. It was fifteen minutes before I went down below.

Q. All right. What time did you go down below?

A. I went down below about ten by our clock.

Q. All right. Now, figure out what time you turned them on?

A. But my clock ain't by your clock.

Q. Oh, you've got your own kind of clock, too?

A. The boat has a different clock; maybe two minutes difference in time.

Q. As a matter of fact, Mr. Selig, you never turned them on that night. Isn't that so?

A. No, sir; I did turn them on.

Q. Let's see if I understand you right. I don't want to do you any injustice. You turned those lights on just before you went below, did you?

A. Yes, I switched the lights on in the pilot-house at nine o'clock. [343—275]

(Testimony of Steve Selig.)

Q. Now, you read a minute? Isn't that your statement? A. Yes, I did about a minute.

Q. Then you turned out your reading light and you went below? A. Yes.

Q. All right. That was ten o'clock, wasn't it?

A. By our clock, it was.

Q. Yes. Is that the same time that you carry in your watch? A. No.

Q. What is the difference between the clock on your boat and the time on your watch?

A. Well, any time when we are working like that on a boat, lots of times your clock ain't the same as the clock in town.

Q. Now, then, you read a minute; then you turned this reading light out? A. Yes.

Q. Then you went below? A. Yes.

Q. And the collision occurred twenty minutes later? Is that right?

A. Fifteen, twenty minutes later.

Q. All right; then you turned those lights on at ten o'clock?

A. Take your own figures for it.

A. Well, if you do take my figures for it, you would find it dark at half-past nine.

Q. I thought you said at nine o'clock it got dark.

A. Dusky, I said.

Q. As a matter of fact, it was dark at eight o'clock and you paid no attention to it?

A. How's that? [344—276]

Q. I say, as a matter of fact, it was dark at eight o'clock and you paid no attention to it?

(Testimony of Steve Selig.)

A. No; it wasn't dark at eight o'clock.

Q. Do you remember anything about it?

A. In July, the 23d of July, I know when it gets dark.

The COURT.—Well, do you know yourself, that particular night. We all know what it is like in July, but the question is what was it like on that night?

Q. Give us your recollection.

The COURT.—Do you remember that night?

A. It don't get dark on July 23d.

The COURT.—That night.

A. Well, that night it didn't get dark no more than dusky at half-past nine.

Q. Do you remember what the conditions were at that time, that night?

A. No, I don't; yes, I remember, too.

Q. Isn't it a fact that you had a bright moon that night and there was no darkness? I'm talking about what you remember now, Mr. Selig.

A. That is not a fact that there was a bright moon that night.

Q. Then it was dark at the time?

A. There was a moon, but the moon was not bright; it was very cloudy and it just come over the mountain.

Q. Yes, and it lit up the waters?

A. We weren't within the range of that moon. I was to the south of that moon.

Q. It would light up the waters anyway, wouldn't it? [345—277]

(Testimony of Steve Selig.)

A. It would ahead of me in a line more than it would down where I was.

Q. But the moon shining on the water gives the whole area a brighter appearance.

A. Well, it will if it is a bright moonlit night, if it is a bright moon, but not a cloudy night.

Q. Well, that was a full moon, wasn't it?

A. No, I think the moon had taken off a few days before that.

Q. But substantially full, practically full, when it come out from behind the clouds.

A. It hasn't got the brightness of a full moon.

Q. No, naturally, but almost as bright as a full moon? A. If it was clear.

Q. That was a clear night?

A. There were some clouds.

Q. I'm talking about the clearness.

A. Clearness on the water? It was a nice day and calm.

Q. Now, then, when the moon came up from behind the clouds, it would light up the whole waters, would it?

A. No, it wouldn't light up the whole waters around like these.

Q. Do you remember anything about it?

A. It never lit up any waters.

Q. Do you remember anything about it?

A. That it didn't light up the waters?

Q. Yes. A. I do.

Q. Now, your boat, you say, runs along at seven miles an hour?

(Testimony of Steve Selig.)

A. About seven miles an hour.

Q. She'll do a whole lot more? [346—278]

A. No.

Q. Do you say that the "Eagle" can't make any more than seven miles an hour?

A. Not much; she may make a little more.

Q. You can stop her within a hundred and twenty-five feet?

A. Yes, within a hundred and twenty-five feet.

Q. You mean if you are at the wheel or do you mean at the engine?

A. If I am at the engine I can stop her.

Q. Did you stop her that night?

A. No, I didn't stop her. Mr. Olander reversed the engine.

Q. It was all done from the pilot-house?

A. Everything was done from the pilot-house.

Q. And you don't know what happened in the pilot-house, do you? A. Before or after?

Q. At any time after you left the pilot-house, you don't know what happened then?

A. I don't know what happened in the pilot-house?

Q. No. You don't know what happened except on hearsay. You don't know who was there or what their condition was, or what they did do?

A. Well, Mr. Olander and Mr. Ames was in the pilot-house.

Q. But you don't know that Mr. Ames was at the wheel?

A. Mr. Ames was at the wheel when I was there?

(Testimony of Steve Selig.)

Q. And you left him in charge of the wheel, did you not, or was Mr. Olander in charge?

A. Mr. Ames was in the pilot-house, at the wheel.

Q. When you were there, did you notice any empty whiskey bottles in the pilot-house? [347—279]

A. There may be a dozen bottles there lying around there. I never noticed any, though.

Q. If there were a dozen there, you would have noticed at least one of them, Captain?

A. Yes, but I didn't notice any there.

Q. The boys testified that there were several whiskey bottles around there. You say you didn't notice any at all?

A. No; there may have been a dozen.

Q. And you don't know whether Al Ames and Joe Olander had any whiskey there or not, do you?

A. They had no whiskey that I seen.

Q. And you didn't have any?

A. No; I didn't have any.

Q. You never had any aboard that boat since prohibition went into effect?

A. No, you had it all up in your office.

Q. When you came from Rupert that afternoon, you didn't bring any with you?

A. Didn't bring anything, absolutely nothing.

Q. So that night Mr. Ryan says that you offered him a drink, but that is not true, is it?

A. It is not true, no.

Q. Did you have a bottle of acid down there in the fore-castle?

(Testimony of Steve Selig.)

A. No; I couldn't say that I had a bottle of acid.

Q. Your counsel asked Mr. Ryan if he didn't know that that was a bottle of acid because you took a drink of it and offered him one. Did you have any such bottle there?

A. Yes, there was a bottle there, but I noticed they didn't take a drink of it. [348—280]

Q. Was it a bottle of acid?

A. No; it wasn't acid.

Q. Do you mind telling us what it was?

A. It was distilled water. [349—281]

**Testimony of Leo. Frank Ryan, for Claimant
(Recalled).**

LEO. FRANK RYAN, recalled as a witness on behalf of the claimant, having been previously sworn, testified as follows:

Direct Examination by Mr. MARTIN.

Q. Mr. Ryan, when you say you saw the lights flash on about a hundred or a hundred and twenty-five feet out there in the darkness, you didn't blow any whistle at all. A. I did not.

**Testimony of Carrington C. Keesling, for
Claimant (Recalled).**

CARRINGTON C. KEESLING, recalled as a witness on behalf of the claimant, having been previously sworn, testified as follows:

Direct Examination by Mr. MARTIN.

Q. Mr. Keesling, at my request, did you go back

(Testimony of Carrington C. Keesling.)

to the "Wildwood" this afternoon to look at her stem piece? A. I did, sir.

Q. At the bow? A. Yes, sir.

Q. Did you find anything wrong with it, damaged? A. No, sir.

Cross-examination by Mr. COSGROVE.

Q. How careful an examination did you make?

A. I made a good examination.

Q. How much time did you spend on it?

A. I was there about twenty minutes at the stem; then examined the whole port side.

Q. You made an examination of the port side?

A. Yes, sir; I went over it.

Q. Are you in a position now to increase your bid \$300 for that job? [350—282] A. No, sir.

Q. What is it worth now?

A. The same price as it was before.

Q. Well, it didn't lose any value, then?

A. Only in deterioration; that's all. [351—283]

AFTERNOON SESSION—Jan. 23, 1922.

Mr. MARTIN.—We want to explain, for the purposes of the record, that those (exhibiting lights) were all the "Wildwood's" lights.

Mr. COSGROVE.—No; we lost the range-light when we were bumped.

Mr. MARTIN.—That's all.

The COURT.—Is that all the evidence? What's the necessity. Any objection?

Mr. COSGROVE.—Beg pardon?

The COURT.—Any objection to this character or kind of lights?

Mr. COSGROVE.—No, your Honor; I think not.

The COURT.—They may be admitted in evidence.

(Received and marked.)

Mr. MARTIN.—There is one further question that I wanted to ask Mr. Leo Ryan that I don't think the record is clear on. Mr. Cosgrove has agreed that I might ask this question.

The COURT.—What is the question?

Mr. MARTIN.—The question is concerning the pilot-house arrangements, etc.

The COURT.—You may ask that.

Testimony of Leo. F. Ryan, for Claimant (Recalled).

LEO. F. RYAN, recalled as a witness on behalf of the claimant, having been previously sworn, testified as follows:

Direct Examination by Mr. MARTIN.

Q. Mr. Ryan, you were sworn before and are the same Mr. Ryan who was master of the "Wildwood" at the time of the collision? [351-A—284]

A. Yes, sir.

Q. I believe you stated that shortly before the collision you had occasion to leave the pilot-house and go to consult Mr. Brindle who was down below? A. Yes, sir.

Q. There isn't any pilot-house control on your engine so that you have to go down below to reverse or stop, or change the speed of the engine?

(Testimony of Leo. R. Ryan.)

A. No, there is a pilot-house control on her, on the engine.

Q. Oh, you have a pilot-house control?

A. Yes.

Q. But to communicate with anyone below, as you did with Mr. Brindle on the night in question, it was necessary for you to leave the pilot-house and go down to speak to him? A. Yes, sir.

A. And you did that? A. Yes.

Q. Now, what distance is that, and what steps did you take to communicate with him? That is, leaving the pilot-house, where was he located, aft or forward?

A. Well, about eight steps into the fore-castle of the boat. The boat had two compartments, a fore-castle and an engine-room, and the engine-room was right below the pilot-house.

Q. You stepped out of the pilot-house, we'll say, to the right or left on the deck? A. Yes, sir.

Q. And then stepped from the deck forward to the [352—285] companionway and went down this little companionway—

The COURT.—Ask him what he did.

Q. Well, say what you did.

A. No, I stepped out on deck, and I didn't go up to the companionway. I just hollered to him down the companionway. The door was open.

Q. How far is it from the pilot-house?

A. Possibly eight feet; not more than eight feet.

Q. Not more than eight feet. And you ran down—do I understand you to say that you ran

(Testimony of Leo. F. Ryan.)

down or spoke down the companionway to Brindle?

A. I spoke to him down the companionway.

Q. He then gave you the course?

A. He gave me the course.

Q. Was there anyone in the pilot-house during the time that you were off from the pilot-house, speaking to Mr. Brindle? A. There was not.

Q. You and Mr. Brindle were the only men on board? A. Yes.

Cross-examination by Mr. COSGROVE.

Q. How long did that take you?

A. It didn't take me more than about twenty or thirty seconds; not more than thirty seconds.

Q. How long before the collision did that happen? A. About six or seven minutes. [353—286]

Redirect Examination by Mr. MARTIN.

Q. Did you have a range-light that night on your boat? A. We did.

Q. Where is that range-light, do you know?

A. Well, I guess it fell off the boat.

Q. Do you know whether that range-light was lighted or not?

A. I am quite positive it was lighted. I know it was lighted.

Q. What size was it, the range-light?

A. Well, it was the regular light, a regular lantern.

Q. How high above the deck?

A. Well, it was eight feet above deck.

(Testimony of Leo. F. Ryan.)

Q. Was it on the same mast with the mast head-light? A. It was not.

Q. Where was it located? A. It was located on top of the pilot-house.

Q. The pilot-house was aft on the vessel?

A. Aft.

Q. Would you swear positively that that range-light was lighted before this collision. Do you know of your own knowledge that that was a fact?

A. I do.

Q. Why didn't you say so when you testified before? A. You didn't ask me.

Q. I asked you the number of lights and you told me that there was one light—

Which was all the evidence offered or received and other proceedings had on the trial of said cause.
[354—287]

Territory of Alaska,
Division No. One,—ss.

This is to certify that the foregoing, pages 3 to 289, inclusive, is a true, complete and properly prepared statement of all of the testimony with the exception of the depositions, introduced upon the trial of said cause on the hearing of the merits in the above-entitled court at Ketchikan, Alaska, on January 19, 20 and 23, 1922, together with all objections and exceptions made and taken to the admission or exclusion of evidence and all motions and rulings by the court thereon made upon said trial together with the original exhibits offered and

admitted in evidence upon said trial and consisting of—

Libelant's exhibits.

Claimant's exhibits.

Dated at Juneau, Alaska, July 1, 1922.

THOS. M. REED,

Judge of the District Court, District of Alaska,
Division No. One, Presiding at the Trial of
Said Cause.

Filed in the District Court, District of Alaska,
First Division. Jul. 1, 1922. John H. Dunn,
Clerk. By ————, Deputy. [355—288]

Notice of Appeal.

To Mary L. Brindle, Executrix of the Last Will of
Alexander Brindle, Deceased, Libelant in the
Above-entitled Cause, and to Charles H. Cos-
grove, Esq., Her Proctor:

You and each of you will please take notice that
S. L. Selig, the above-named claimant, hereby ap-
peals from the final decree of the above-entitled
court in the above-entitled cause, and from the
whole thereof, which decree was made, entered and
filed in the above-entitled cause on the — day
of June, 1922, to the United States Circuit Court
of Appeals for the Ninth Circuit.

S. L. SELIG,
Claimant.

Proctor for Claimant.

Due service of the within notice of appeal after
the filing of the same in the office of the clerk of

the above-entitled court admitted this 12th day of June, 1922.

CHAS. H. COSGROVE,
Proctor for Libelant.

Filed in the District Court, District of Alaska,
First Division. June 13, 1922. Jno. H. Dunn,
Clerk. By M. D. Morrissey, Deputy. [356—289]

Order Fixing Supersedeas and Cost Bond.

Upon the motion of the claimant for order fixing the amount of supersedeas and of bond for costs on appeal,—

IT IS ORDERED that the amount of the bond to be given in the above-entitled cause by claimant therein upon appeal to cover costs on appeal and to act as a supersedeas be and the same hereby is fixed in the sum of \$250.00—TWO HUNDRED AND FIFTY DOLLARS—for costs on appeal, and the further sum of \$2500.00—TWENTY-FIVE HUNDRED DOLLARS—to act as a supersedeas.

Dated this 15th day of June, 1922.

THOS. M. REED,
Judge.

The foregoing order may be entered.

CHAS. H. COSGROVE,
Proctor for Libelant.

Filed in the District Court, District of Alaska,
First Division. Jun. 15, 1922. John H. Dunn,
Clerk. By M. D. Morrissey, Deputy.

Entered Court Journal No. D, page 270. [357]

Stipulation and Order Re Filing Bill of Exceptions.

The parties hereto stipulate by and through their respective proctors as follows:

That claimant may have ninety days from and after the date of the adjournment of the Court for the term within which the decree on behalf of the libelant in said cause was entered, within which to have reduced to form, settled and allowed, a bill of exceptions in said cause.

In the event the term of Court during which the final decree was entered has ended before the entry of an order extending the time in accordance with this stipulation, then the said term shall be deemed extended for the purpose of entering this order and the time shall be by the Court extended ninety days from the date of expiration of said term whether the order be made before or after adjournment, with the same force and effect as if the same had been entered before such adjournment and before the close of the term of said Court during which final decree was entered.

IN WITNESS WHEREOF the parties hereto have set their hands by and through their respective proctors this 12th day of June, 1922.

CHAS. H. COSGROVE,

Proctor for Libelant.

WINTER S. MARTIN,

Proctor for Claimant. [358]

ORDER.

Upon reading the above stipulation it is ordered that claimant have ninety days from and after the

date of adjournment of the court for the term within which the decree on behalf of libelant in the above-entitled cause was entered, within which to have reduced to form, settled and allowed a bill of exceptions in said cause.

Dated this 15th day of June, 1922.

THOS. M. REED,
Judge.

Filed in the District Court, District of Alaska, First Division. Jun. 15, 1922. John H. Dunn, Clerk. By M. D. Morrissey, Deputy.

Entered Court Journal, No. D, page 270. [359]

Stipulation Extending Time Within Which Appellate Record May Be Lodged in the Clerk's Office of the Circuit Court of Appeals for the Ninth Circuit.

IT IS STIPULATED in the above cause between the parties hereto that claimant and appellant may have until the 1st day of October, 1922, within which to lodge the appellate record in the above-entitled cause in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and the above-entitled court may make an order upon this stipulation enlarging the time within which to lodge the appellate record and to file and docket said cause in said Court of Appeals to and including the 1st day of October, 1922.

WITNESS my hand at Seattle, Washington, this 20th day of June, 1922.

WINTER S. MARTIN,

Proctor for Claimant-Appellant.

WITNESS my hand at Ketchikan, Alaska, this 26th day of June, 1922.

CHAS. H. COSGROVE,

Proctor for Libellant.

Filed in the District Court, District of Alaska, First Division. Jun. 28, 1922. John H. Dunn, Clerk. By W. B. King, Deputy. [360]

Order Extending Time to Lodge Record on Appeal.

It is ordered that the time within to lodge the appellate record in the above-entitled cause in the office of the Clerk of the Court of Appeals for the Ninth Circuit may be and it hereby is enlarged and extended from the date of its expiration under the rule of Court to and including the 1st day of October, 1922.

Dated at Juneau this 28th day of June, 1922.

THOS. M. REED,

Judge.

Filed in the District Court, District of Alaska, First Division. Jun. 28, 1922. John H. Dunn, Clerk. By W. B. King, Deputy.

Entered Court Journal No. R, page 275-Juneau. [361]

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS: That We, S. L. Selig, of Ketchikan, the above-named claimant, as principal, and United States Fidelity & Guaranty Company, a corporation, as surety, are held and firmly bound unto Mary L. Brindle, Executrix of the Estate of Alexander Brindle, deceased, libellant, in the full sum of TWO HUNDRED AND FIFTY (\$250.00) DOLLARS, and in the further sum of TWENTY-FIVE HUNDRED (\$2500.00) DOLLARS, to be paid to the said Mary L. Brindle, executrix of the estate of Alexander Brindle, deceased, libellant, for the payment of which well and truly to be made, we bind ourselves, our and each of our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 15th day of June, 1922.

WHEREAS, S. L. Selig, as claimant of the gas boat "Eagle," her engine, apparel, tackle and furniture, has appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree of the District Court of the District of Alaska, First Division, bearing date the — day of June, 1922, in a suit in which Mary L. Brindle, executrix of the estate of Alexander Brindle, deceased, is libellant, against the gas boat "Eagle," her engine, tackle, apparel and furniture, which decree orders the said gas boat "Eagle" and her stipulators to pay libellant the sum of \$2,006.80; and

WHEREAS, [362] S. L. Selig, claimant, desires during the process of such appeal to stay the execution of the said decree of the said District Court; and

WHEREAS, the said District Court having fixed the amount of supersedeas at TWENTY-FIVE HUNDRED (\$2500.00) DOLLARS:

NOW, WHEREFORE, the condition of this obligation is such, that if the above-named appellant, S. L. Selig, shall prosecute said Appeal with effect and pay all costs which may be awarded against him as such appellant if the appeal is not sustained, and shall abide by and perform whatever decree may be rendered by the United States Circuit Court of Appeals for the Ninth Circuit in this cause, or on the mandate of said Court by the Court below, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

S. L. SELIG,
Principal.

UNITED STATES FIDELITY & GUAR-
ANTY COMPANY.

By R. E. ROBERTSON,
Its Attorney-in-Fact,
Surety.

Approved this 21st day of June, 1922.

CHAS. H. COSGROVE,
Proctor for Libellant.

Approved this 15th day of June, 1922.

THOS. M. REED,
Judge.

Filed in the District Court, District of Alaska, First Division. Jun. 21, 1922. John H. Dunn, Clerk. By M. D. Morrissey, Deputy. [363]

Order Enlarging the Time Within Which Appellate Record may be Lodged in the Court of Appeals.

Upon the application of claimant in the above-entitled cause, after reading the affidavit of claimant's proctor, the Court being duly advised as to the propriety of granting the same,—

IT IS BY THE COURT ORDERED that claimant and appellant in the above-entitled cause may have the period of one month from and after the first day of October, to wit, until the first day of November, 1922, within which to lodge the Appellate Record in said cause within the office of the clerk of the United States Circuit Court of Appeals, for the Ninth Circuit; and the time within which said record may be lodged therein, and said cause docketed, may be and it hereby is extended and enlarged from the first day of October to and including the first day of November, 1922.

Dated at Juneau, Alaska, September 18, 1922.

THOS. M. REED,

Judge of the District Court of Alaska, Division No. 1.

Filed in the District Court, District of Alaska, First Division. Sep. 18, 1922. John H. Dunn, Clerk. By —————, Deputy.

Entered Court Journal Civil "R," page 358.
[364]

Order Sending Up Original Exhibits.

Upon the application of the claimant for an order sending the original exhibits and original bill of exceptions to the Court of Appeals as part of the appellate record in the above-entitled cause on appeal, and it appearing to the Court that the original exhibits and original bill of exceptions may properly be included in the appellate record and forwarded as part of the record by the Clerk of this court, instead of copies thereof,—

IT IS NOW ORDERED that all the original exhibits introduced in evidence and filed herein, be sent by the clerk of this Court as part of the record on appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit, instead of copies thereof. Ship's lamps excepted from order to send up original exhibits.

Dated at Juneau, Alaska, September 18th, 1922.

THOS. M. REED,

Judge of the District Court of Alaska, Division
No. 1.

Filed in the District Court, District of Alaska,
First Division. Sept. 18, 1922. John H. Dunn,
Clerk. By ————, Deputy.

Entered Court Journal Civil "R," page 358.
[365]

Assignments of Error.

Now comes Steve Selig, the claimant of the gas power boat "Eagle," and respondent in above cause, by his proctor, Winter S. Martin, and says that in the record and proceedings in said cause and in the final decree entered therein, there is manifest error in the following particulars:

1. The Court erred in entering a decree finding the claimant and respondent Steve Selig solely at fault in the collision between the "Wildwood" and the "Eagle."

2. The Court erred in not finding the said colliding vessels, "Wildwood" and "Eagle" and their respective owners and masters mutually at fault.

3. The Court erred in not dividing the damages resulting from the collision equally between the owners of said respective vessels upon the ground of mutual fault.

4. The Court erred in finding that the "Wildwood" had the right of way, for it appears from the testimony that the vessels were nearly end-on when they first observed each other.

5. The Court erred in finding that the "Eagle" starboarded her helm and turned to port toward the Mary Island shore.

6. The Court erred in finding that if the "Eagle" had put her helm to port, she would have cleared the "Wildwood." [366]

7. The Court erred in concluding that the proximate cause of the collision was the negligence of the "Eagle."

8. The Court erred in not finding the "Wildwood" at fault for the failure to maintain a proper and efficient lookout immediately prior to the collision, when from all the evidence it clearly appears that if such lookout had been kept on the "Wildwood," the collision could have been avoided.

9. The Court erred in not finding that the master of the "Wildwood" under the general prudential rule should have stopped his engines or have given the danger signal when he first observed the "Eagle" on his port bow some distance away.

10. The Court erred in not finding the master of the "Wildwood" at fault for failure to sound a danger signal and to stop and reverse his engines when danger was first observed.

11. The Court erred in not finding this young man under twenty-one years of age disqualified from acting as master of a registered vessel trading in foreign commerce.

12. The Court erred in not finding that the evident lack of skill and experience of the young man in command of the "Wildwood" was a contributory cause of the collision which occurred.

13. The Court erred in not finding the "Wildwood" at fault upon the admission of her master that if he had been looking over the port bow and watching closely, he might have seen it referring to the "Eagle."

14. The Court erred in not finding the "Wildwood" at fault upon the admission of her master that while alone in the wheel-house charged with

the double duty of steering his vessel and keeping lookout he left the wheel-house, stepped out on deck, went to the companionway and talked with Brindle, who was below decks, the "Wildwood" then being in the danger zone.

15. The Court erred in not finding the "Wildwood" at fault [367] when her master admitted that he did not blow a whistle or sound a signal before the collision.

16. The Court erred in not finding that the "Wildwood" was at fault in not giving one blast of her whistle if her master intended to make a port to port passing when he saw the mast head and side lights of the "Eagle" bearing about six feet from the "Wildwood's" stem on his port bow.

17. The Court erred in holding that the "Wildwood" was not obligated to maintain a proper and efficient lookout, because she had the right of way.

18. The Court erred in not finding that the helmsman in the pilot-house of the "Wildwood" could have seen the "Eagle" approaching during some four minutes prior to the collision when two of the disinterested witnesses from the shore not so advantageously placed saw the "Eagle," heard her exhaust and watched the vessels as they came together.

19. The Court erred in not finding that the "Wildwood" was violating the collision rules in not showing a range-light, and not having her lights burning brightly so they could be seen by the "Eagle."

20. The Court erred in not finding that the "Wildwood's" master should have seen and heard the "Eagle" long before the vessels entered the danger zone and that he was as much at fault as the "Eagle" in not so doing.

21. The Court erred in not finding the owners and master of the "Wildwood" grossly negligent in not taking steps to avoid the collision by changing her course, stopping or reversing her engines, giving the danger signal without regard to the fault of the "Eagle," for it clearly appears from the shore witnesses that the "Eagle" was in the "sheen of the moon," and could have been easily and readily seen for at least a half mile before the vessels entered the danger zone, if the master of the "Wildwood" had been paying attention to his duties. [368]

22. The Court erred in finding that the failure of the "Eagle" to have and maintain proper lights was the proximate cause of the collision, for the "Eagle" could have been readily seen without lights by the "Wildwood's" master, if he had been paying attention to his duty, or if Brindle, who was below deck had been keeping lookout as required by law and the collision rules.

23. The Court erred in awarding damages for injury to the hull in any greater sum than its value which was found to be \$350.00.

24. The Court erred in not finding that the "Wildwood" was not worth repairing and in not estimating the damage at the value of the hull immediately before the collision.

25. The Court erred in allowing as damages a sum greater for cost of repairs than the value of the hull.

26. The Court erred in fixing the damage to the hull in any sum greater than \$350.00 and in failing to divide the same between libellant and claimant.

27. The Court erred in not dividing the cargo loss between the parties.

28. The Court erred in awarding any sum for loss of batteries, electrical equipment and supplies.

29. The Court erred in applying the rule of $\frac{2}{3}$ rds off new for old.

30. The Court erred in allowing any sum for reconditioning the engine.

31. The Court erred in allowing \$240.00, or any other sum, as demurrage for the loss of the use of the "Wildwood."

32. The Court erred in finding a total damage in any sum in excess of \$700.00, and in not dividing this amount; that is to say the Court erred in entering any decree against the claimant [369] herein in excess of \$350.00 for the reason that no damage in excess of \$700.00 could be properly awarded, and this sum with costs of suit should have been divided upon the ground of mutual fault.

33. The Court erred in making specific Findings of Fact and Conclusions of Law over the objections and exceptions of the claimant.

34. The Court erred in not sustaining the exceptions and objections taken at the trial in the admission and rejection of testimony which ex-

ceptions and objections are noted and preserved in the bill of exceptions.

35. The Court erred in entering findings numbered one and two over the objection and exception of claimant, for the reason preserved and noted in the exceptions taken and allowed at the time of entry of said findings and decree.

36. The Court erred in entering the Conclusions of Law noted in the allowed exception thereto.

37. The Court erred in entering final decree over the noted exceptions of claimant.

WINTER S. MARTIN,

Proctor for Claimant and Respondent.

Filed in the District Court, District of Alaska, First Division. Aug. 25, 1922. John H. Dunn, Clerk. By M. D. Morrissey, Deputy. [370]

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
District of Alaska,
Division No. 1,—ss.

I, John H. Dunn, Clerk of the District Court for the District of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached 375 pages of typewritten matter, numbered from one to 375, both inclusive, constitute a full, true, and complete copy, and the whole thereof, of the record prepared in accordance with the praecipe of proctor for claimant and appellant on file in my office and

made a part hereof, in Cause No. 493-KA, wherein Mary L. Brindle, Executrix of the Estate of Alexander Brindle, deceased, is libellant and appellee and gas power boat "Eagle," her engine, tackle, apparel and furniture, S. L. Selig, claimant, is appellant.

I further certify that the said record is by virtue of a notice of appeal and citation issued in this cause and the return thereof in accordance therewith.

I further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certificate amounting to the sum of One Hundred Seventy 25/100 (\$170.25) Dollars has been paid to me by claimant and appellant.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the above-entitled court this 6th day of October, 1922.

[Seal]

JOHN H. DUNN,
Clerk.

[Endorsed]: No. 3935. United States Circuit Court of Appeals for the Ninth Circuit. S. L. Selig, as Claimant of the Gas Power Boat "Eagle," Her Engine, Apparel, Tackle and Furniture, and J. R. Heckman, Stipulator, Appellants, vs. Mary L. Brindle, as Executrix of the Estate of Alexander Brindle, Deceased, Appellee. Apostles on Appeal.

Upon Appeal from the United States District Court
for the Territory of Alaska, Division No. 1.

Filed October 23, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

At a stated term, to wit, the October term, A. D.
1922, of the United States Circuit Court of
Appeals for the Ninth Circuit, held in the
courtroom thereof, in the City and County of
San Francisco, in the State of California, on
Monday, the twentieth day of November, in
the year of our Lord one thousand nine hun-
dred and twenty-two. Present: The Honor-
able WILLIAM B. GILBERT, Senior Circuit
Judge, Presiding; The Honorable WILLIAM
H. HUNT, Circuit Judge; The Honorable
CHARLES E. WOLVERTON, District Judge.

No. 3935.

S. L. SELIG, as Claimant of the Gas Power Boat
"EAGLE," Her Engine, Tackle, Apparel
and Furniture,

Appellant,

vs.

MARY L. BRINDLE, as Executrix of the Estate
of ALEXANDER BRINDLE, Deceased,
Appellee.

Order Permitting the Amendment of Notice of Appeal, Appeal Bond and Appellate Record to Include J. R. Heckman as Coappellant.

This case coming on to be heard upon the motion of the appellant, Steve L. Selig, and J. R. Heckman for an order permitting the amendment of motion of appeal, appeal bond and the appellate record generally in the above-entitled cause, to include as coappellant therein J. R. Heckman, surety in the stipulation to abide the decree filed in the Clerk's office at Ketchikan, when action was first instituted against the gas power boat "Eagle," wherein and whereby the "Eagle" was released and discharged, and the bond substituted therefor;

And it appearing to the Court that J. R. Heckman is a necessary and proper party appellant in said cause and that his name was omitted from the notice of appeal and other appellate papers by inadvertence, and it appearing further that said J. R. Heckman has waived the issuance and service of citation and notice of appeal, and has entered his appearance in the above-entitled cause, and that the parties appellants, Steve L. Selig, and J. R. Heckman will jointly execute a new appeal and supersedeas bond in the same amount as the one now on file in said cause in the same amount and with the same covenants and conditions therein, for the security of the appellee, and the Court being duly advised as to the propriety thereof,—

IT IS BY THE COURT ORDERED AND DECREED that the notice of appeal, appeal bond, and all of the papers in the appellate record may be and hereby are amended so as to include the name of J. R. Heckman as additional appellant. Said cause to hereinafter proceed and to be styled as "Steve L. Selig, Claimant, and J. R. Heckman, Stipulator, Appellants, vs. Mary L. Brindle, Executrix Libellant Appellee."

IT IS FURTHER ORDERED that said appellants be and they hereby are permitted to file a new and substitute appeal bond in their joint names as coappellants with the same condition as to amount and surety as in the original appeal and supersedeas bond, and when so filed said original and supersedeas bond shall be vacated and exonerated and the new and substituted bond shall be thereafter effected as an appeal and supersedeas bond in said cause upon the joint appeal of said Selig and Heckman.

IT IS FURTHER ORDERED AND DECREED that no further or additional notice of appeal or citation shall be necessary in said cause, it appearing to the Court that said J. R. Heckman waives notice and citation.

In the United States Circuit Court of Appeals
Ninth Circuit.

IN ADMIRALTY—No. 3935.

S. L. SELIG, as Claimant of the Gas Power Boat
“EAGLE,” Her Engine, Apparel, Tackle
and Furniture, and J. R. HECKMAN, Stipu-
lator,

Appellants,

vs.

MARY L. BRINDLE, as Executrix of the Estate
of ALEXANDER BRINDLE, Deceased,
Appellee.

**Stipulation Omitting Parts of Record for Printing
Purposes.**

The parties hereto by virtue of the provisions of subdivision 8, General Rule 23, of the above-entitled court, stipulate and agree that the Clerk of this court in the above-entitled cause shall not be required and he is requested not to print the following described portions of the record in his custody, to wit:

1. All of the title of the court, cause and caption on all papers after the statement of the case made by the Clerk of the District Court found at page one of this record.
2. Original libel, pages 2 to 5, inclusive.
3. Stipulation for costs, page 6.
4. Attachment and monition, pages 7 and 8.
5. Claim of owner, page 9.

6. Intervenor's stipulation for costs and expenses, page 10.
7. Stipulation, pages 11 and 12.
8. Mr. Cosgrove's order of release to the marshal, page 13.
9. Appearance of Winter S. Martin, page 14.
10. Claim of owner, page 15.
11. Exceptions to libel at pages 16 and 17.
12. Claimant's interrogatories numbered 7, 8 and 9, at page 19.
13. Answers to interrogatories 7, 8 and 9, at pages 21 and 22.
14. All that part of answer to interrogatory No. 13 at page 23 of the record, as follows: lines 20 to 30 inclusive, and lines 32 to 37 inclusive.
(N. B.—The Clerk will please not omit line 31, to wit: "Overhauling the engine and new bronze shaft, \$200.)
15. Minute order, hearing exceptions to libel, page 25.
16. Stipulation and order, page 30.
17. Affidavit for substitution of libellant, page 39.
18. The following parts of transcript of the evidence or bill of exceptions, commencing at page 71 of this record, as follows, to wit:
All that part on the pages hereinafter mentioned which is bracketed and initialed "W. S. M." and "R. W. J.," viz: On pages 71, 72, 74, 75, 76, 77, 83, 84, 89, 90, 91, 92, 93, 94, 95, 96, 98, 100, 101, 102, 107, 108, 114, 117, 120, 121, 122, 124, 125, 127, 128, 130, 131, 132,

140, 141, 155, 158, 161, 162, 163, 164, 165,
174, 176, 177, 178, 179, 180, 196, 201, 202,
203, 208, 209, 210, 211, 214, 215, 216, 217,
218, 219, 225, 226, 229, 230, 231, 232, 233,
237, 241, 242, 243, 245, 250, 251, 252, 253,
254, 255, 256, 269, 273, 287, 281, 290, 291,
293, 294, 295, 297, 298, 299, 300, 303, 305,
308, 309, 312, 313, 319, 324, 326, 327, 349,
350, 351, 353, 354.

19. Citation on appeal, pages 371 and 372.

20. Praecipe designating contents of appellate record, pages 373, 374, and 375.

In stipulating that the above parts of the record need not be printed it is agreed that none of the foregoing parts are material or necessary for the consideration of any question that is before the Court.

The parties hereby agree to, and do accept the findings of the District Court upon the following items only of the damage, as assessed by the lower court, viz.: \$294.30, cargo loss; \$222.50, supplies and material.

IN WITNESS WHEREOF the parties have hereinafter set their hands this 22d day of November, 1922.

WINTER S. MARTIN,

Proctor for Appellants.

ROBERT W. JENNINGS,

Proctor for Appellee.

[Endorsed]: In Admiralty—No. 3935. In the United States Circuit Court of Appeals, Ninth Circuit. S. L. Selig, as Claimant of the Gas Power

Boat "Eagle," Her Engine, Apparel, Tackle, and Furniture, and J. R. Heckman, Stipulator, Appellants, vs. Mary L. Brindle, as Executrix of the Estate of Alexander Brindle, Deceased, Appellee. Filed Nov. 22, 1922. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals,
Ninth Circuit.

IN ADMIRALTY—No. 3935.

S. L. SELIG, as Claimant of the Gas Power Boat,
"EAGLE," Her Engine, Apparel, Tackle and
Furniture, and J. R. HECKMAN, Stipulator,
Appellants,

vs.

MARY L. BRINDLE, as Executrix of the Estate
of ALEXANDER BRINDLE, Deceased,
Appellee.

**Appellants' Statement of Errors upon which They
Intend to Rely, Together With Parts of the
Record Which They Deem Necessary to Print
Pursuant to Subdivision 8 of Rule 23.**

To the Honorable Judges of the Above-entitled
Court:

The appellants herewith file with the Clerk of the above-entitled court a statement of the errors upon which they intend to rely in the above cause, together with the parts of the appellate record which they deem necessary for the consideration

thereof under and by virtue of Subdivision 8 of General Rule 23 of this court, viz.:

Appellants will rely wholly and entirely upon those assigned errors which relate to and touch the question of liability in the above-entitled cause and they will not present in this court any claim or error based upon the amount or extent of damages awarded by the District Court, reserving, however, the right at all times in this appeal to have the liability and the damages in said cause divided upon the ground of mutual fault; that is to say, that appellants will waive any of the assignments of error in said cause touching the amount or extent of the damages assessed and awarded by the trial court, to wit:

\$1050.00 awarded by the District Court for the cost of repairs.

294.30 cargo loss.

222.50 property loss, consisting of supplies and equipment.

200.00 for re-conditioning the gasoline engine.

240.00 for loss of profits, making a total of

\$2006.80, which is the amount awarded by the District Court.

POINTS AND ERRORS UPON WHICH APPELLANTS WILL RELY.

Appellants reserve for determination on this appeal all questions arising under Assignments of Error 1 to 22, inclusive.

All other assignments are hereby waived except as to the question of divided liability, to wit:

23 to 27, inclusive, in so far as they question the amount or extent of the damages found by the District Court to have been sustained by reason of the collision, expressly reserving, however, throughout all of said assignments the right to have the said damages divided under the admiralty rule of damages, upon the ground of mutual fault and negligence.

PARTS OF THE RECORD WHICH THE APPELLANTS DEEM NECESSARY TO PRINT.

Appellant having waived, in the foregoing statement of errors upon which they intend to rely, all questions touching the amount or extent of the several items of damage awarded by the trial court, except the right to a division thereof, and having heretofore by stipulation filed this day agreed to eliminate certain immaterial parts of the record as unnecessary to a consideration of this appeal, now further designate to the Clerk certain portions of the record which appellants deem unnecessary to a consideration of the questions reserved upon this appeal; that is to say, the appellants deem it unnecessary to print the following parts of the record in the above-entitled cause in addition to those already eliminated by stipulation, to wit:

DEPOSITIONS TAKEN UPON INTERROGATORIES:

1. Interrogatories propounded by claimant to libellant, pages 18, 19 and 20.

2. Answers to interrogatories propounded by claimant to libellant, pages 21, 22, 23 and 24.
 3. Stipulation to take the testimony of H. M. Sawyer upon direct and cross-interrogatories, page 41.
 4. Direct interrogatories propounded to H. M. Sawyer, pages 42 and 43.
 5. Answers to direct interrogatories propounded to H. M. Sawyer, page 44.
 6. Cross-interrogatories propounded to H. M. Sawyer, page 45.
 7. Answers to cross-interrogatories by H. M. Sawyer, page 46.
 8. Certificate of Arthur E. Carr, Notary, page 47.
 9. Stipulation to take testimony of R. P. Walsh on direct and cross-interrogatories, page 48.
 10. Direct interrogatories to R. P. Walsh, pages 49 and 50.
 11. Answers to direct interrogatories by R. P. Walsh, page 51.
 12. Cross-interrogatories to R. P. Walsh, pages 52 and 53.
 13. Notarial certificate of Arthur E. Carr, page 54.
- LIBELLANT'S TESTIMONY, viz:
14. All of the testimony of Alexander Brindle, commencing at page 71 and continuing to and including page 84.
 15. All of the testimony of Alexander Brindle, commencing at page 200 and continuing to and including page 203.
 16. All of the testimony of Alexander Brindle, commencing at page 229 to and including page 231.

17. All of the testimony of A. J. Inman, commencing at page 85 and continuing to and including the first twelve lines of page 105.
(N. B. The Clerk will please be careful to include the recross-examination of Mr. Martin commencing in the middle of page 105 and continuing throughout page 105 to page 108, inclusive, except as the initialed parts have been eliminated by stipulation. That part is preserved for the sole purpose of showing the Court where the "Wildwood" was struck by the "Eagle" and explaining the direction of the blow and the place of the injury.)
18. All of the testimony of A. J. Inman, commencing at page 226 and continuing to and including page 228.
19. All of the testimony of George Thompson, commencing at page 109 and continuing to and including page 121.
20. All that portion of the testimony of Harold A. Brindle commencing at page 164 to and including the first nine lines of page 171; also that portion of Harold A. Brindle's testimony commencing at line eight, page 176, to and including line twenty-five, page 176; also all that portion of Harold A. Brindle's testimony commencing at line thirteen, page 177, continuing to and including line thirteen of page 191.
21. All of the testimony of Alexander Winterburn Brindle commencing at page 195 and continuing to and including page 199.

CLAIMANT'S TESTIMONY, viz:

22. All of the testimony of Carrington C. Keesling commencing at page 234 and continuing to and including page 252.
23. All that additional part of Carrington C. Keesling's testimony at pages 350 and 351.
24. All of the testimony of Joseph F. Radenbaugh commencing at page 257 and continuing to and including page 269.
25. All of the testimony of James Rasmussen, commencing at page 270 and continuing to and including page 278.
26. All of the testimony of Alexander Brindle commencing at page 279 and continuing to and including page 281.
27. All of the testimony of Patrick Hamilton commencing at page 306, and continuing to and including page 308.

Except as to the parts of the record deleted by mutual agreement in the written stipulation filed by the parties hereto in said cause, the Clerk of the above-entitled court will please print all of the typewritten and certified appellate record in the above cause, except the parts hereinabove specifically deleted and eliminated, to the end that (1) under the stipulation above mentioned certain immaterial and irrelevant parts of the record shall be omitted, and (2) only those parts of the record shall be printed by the Clerk under subdivision 8 of Rule 23 of this Court as are necessary to a proper deter-

mination of the questions reserved by this statement of errors upon which appellants intend to rely.

The questions of liability and division of damages do not call for or require the printing of any of the parts of the record specifically designated herein to be omitted.

Dated at San Francisco, California, this 22d day of November, 1922.

WINTER S. MARTIN,

Attorney for Appellants.

Service of the foregoing statement of errors upon which appellants intend to rely, together with a designation to the Clerk of parts of record to be printed acknowledged this 22d day of November, 1922, at San Francisco, Calif.

ROBERT W. JENNINGS,

Proctor for Appellee.

[Endorsed]: In Admiralty—No. 3935. In the United States Court of Appeals, Ninth Circuit. S. L. Selig, as Claimant of the Gas Power Boat "Eagle," her Engine, Apparel, Tackle and Furniture, and J. R. Heckman, Stipulator, Appellants, vs. Mary L. Brindle, as Executrix of the Estate of Alexander Brindle, Deceased, Appellee. Filed Nov. 22, 1922. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals,
Ninth Circuit.

IN ADMIRALTY—No. 3935.

S. L. SELIG, as Claimant of the Gas Power Boat
“EAGLE,” Her Engine, Apparel, Tackle and
Furniture, and J. R. HECKMAN, Stipulator,
Appellants,

vs.

MARY L. BRINDLE, as Executrix of the Estate of
ALEXANDER BRINDLE, Deceased,
Appellee.

Designation by Appellee for Printing Record.

To the Clerk of the Above-entitled Court:

The appellee requests you to have printed the *entire* record on file with you in above-entitled cause, *except* the following mentioned portions, viz.

(1) All those portions mentioned in stipulation signed by proctors for the parties and filed with you herein on November 22d, 1922, as being portions agreed not to be printed.

(2) (1) Stipulation to take the testimony of
H. M. Sawyer upon direct and cross-
interrogatories, page 41.

(2) Direct interrogatories propounded to
H. M. Sawyer, pages 42 and 43.

(3) Answers to direct interrogatories pro-
pounded to H. M. Sawyer, page 44.

(4) Cross-interrogatories propounded to
H. M. Sawyer, page 45.

- (5) Answers to cross-interrogatories by H. M. Sawyer, page 46.
- (6) Certificate of Arthur E. Carr, Notary, page 47.
- (7) Stipulation to take testimony of R. P. Walsh on direct and cross interrogatories, page 48.
- (8) Direct interrogatories to R. P. Walsh, pages 49 and 50.
- (9) Answers to direct interrogatories by R. P. Walsh, page 51.
- (10) Cross-interrogatories to R. P. Walsh, pages 52 and 53.
- (11) Notarial certificate of Arthur E. Carr, page 54.
- (12) All of the testimony of Alexander Brindle, commencing at page 200 and continuing to and including page 203.
- (13) All of the testimony of Alexander Brindle, commencing at page 229 to and including page 231.
- (14) All that portion of the testimony of Harold A. Brindle commencing at page 164 to and including the first nine lines of page 171; also that portion of Harold A. Brindle's testimony commencing at line eight, page 176, to and including line twenty-five, page 176; also all that portion of Harold A. Brindle's testimony commencing at line thirteen, page 177, continuing to and including line thirteen, of page 191.

- (15) All of the testimony of Alexander Winterburn Brindle commencing at page 195 and continuing to and including page 199.

This designation is made in accordance with Section 8 of Rule 23 and is made because we desire to contend for an increased allowance for repairs to the hull and also for interest on all allowances made, besides contending that *all* the damage shall be borne by appellant (claimant).

Dated at San Francisco, November 27, 1922.

CHAS. H. COSGROVE,
ROBERT W. JENNINGS,
Proctors for Appellee (Libellant).

[Endorsed]: No. 3935. United States Circuit Court of Appeals for the Ninth Circuit. S. L. Selig, as Claimant, etc., Appellants, vs. Mary L. Brindle, as Executrix, etc., Appellee. Designation of Appellee Under Subdivision 8 of Rule 23. Filed Nov. 27, 1922. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals,
Ninth Circuit.

IN ADMIRALTY—No. 3935.

S. L. SELIG et al.,

Appellants,

vs.

MARY L. BRINDLE, Executrix,

Appellee.

Additional Designation by Appellee for Printing Record.

In my "Designation by Appellee for Printing Record" filed with you on November 27, 1922, I inadvertently omitted to direct the printing of the following enumerated lines of Harold A. Brindle's testimony, to wit:

The last twelve lines on page 164, the first eight lines on page 165, and the last six lines on page 165. You will please have those lines printed.

This, of course, modifies sub-section (14) of 2 in my said former designation.

Dated at San Francisco, November 29, 1922.

ROBERT W. JENNINGS,
Proctor for Appellee.

[Endorsed]: No. 3935. United States Circuit Court of Appeals for the Ninth Circuit. S. L. Selig et al., Appellants, vs. Mary L. Brindle, etc., Appellee. Additional Designation by Appellee Under Sub. 8 of Rule 23. Filed Nov. 29, 1922. F. D. Monckton, Clerk.